

3-15918

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15918

In the Matter of

DENNIS J. MALOUF,

Respondent.

RESPONDENT'S RESPONSE TO
DIVISION'S PROPOSED ADDITIONAL
FINDINGS OF FACT AND CONCLUSIONS
OF LAW

I. Proposed Findings of Fact

A. Securities Exchange Act § 15(a)(1): Unregistered broker or dealer

1	The bond transactions at issue in this case are securities transactions.
	<p>United States Treasury, agency and municipal bonds traded on behalf of UASNM clients from 2008 through 2011 were “securities” as defined by Section 2(a)(1) of the Securities Act of 1933 and Section 3(a)(10) of the Securities Exchange Act of 1934 (“Exchange Act”). Pre-Trial Joint Stipulation 1, FOF #281.</p> <p>United States Treasury and municipal bonds are “exempted securities” as defined by Section 3(a)(12)(A)(i) and (A)(ii) of the Exchange Act, but municipal bonds are not deemed to be “exempted securities” for the purposes of Section 15 of the Exchange Act (<i>see</i> Section 3(a)(12)(B)(ii)). Pre-Trial Joint Stipulation 2, FOF #282.</p> <p>United States Treasury bonds are “government securities” as defined by Section 3(a)(42) of the Securities Act. Pre-Trial Joint Stipulation 3, FOF #283.</p>
	UNDISPUTED
2	From 2008 to May 2011, Malouf regularly participated in securities transactions at key points in the chain of distribution.
	<p>From 2008 to May 2011, Malouf was one of several investment advisers at UASNM who provided advice regarding investments on behalf of UASNM customers and transactions were carried out on behalf of UASNM customers pursuant to the advice of Malouf and other UASNM advisers. Pre-Trial Joint Stipulation 4, FOF #284.</p> <p>In providing investment advice to UASNM customers, Malouf and other UASNM advisers utilized instruments of interstate commerce, such as telephones, electronic mail, and regular mail. Pre-Trial Joint Stipulation 5, FOF #285.</p> <p>During 2008 to May 2011, Malouf was CEO and President of UASNM, a registered investment adviser, and he was an advisory representative for UASNM. Pre-Trial Joint Stipulation 6, FOF #286.</p> <p>During 2008 to May 2011, Malouf solicited clients on behalf of UASNM. Pre-Trial Joint Stipulation 7, FOF #287.</p> <p>Malouf was primarily the person at UASNM who identified which bonds should be purchased for UASNM customers. Pre-Trial Joint Stipulation 8, FOF # 288.</p>
	DISPUTED

	<p>Malouf did not participate at “at key points in the chain of distribution.” All of the material cited by the Division in support of this proposed finding of fact demonstrates that Malouf was acting solely as an investment adviser.</p> <p>“From 2008 to May 2011, Malouf was one of several investment advisers at UASNM who provided advice regarding investments on behalf of UASNM customers”</p> <p>“In providing investment advice to UASNM customers, Malouf and other UASNM advisers . . .”</p> <p>“Malouf was CEO and President of UASNM, a registered investment adviser, and he was an advisory representative for UASNM”</p> <p>Malouf solicited clients to use UASNM investment advisory services, and the identification and recommendation of bonds to purchase were part of that investment advisory service.</p> <p>There is no evidence that he participated at any other “key point in the chain of distribution.”</p> <p>UASNM directed various brokers to buy and sell securities in the secondary market for its customers in accounts that were custodied at those brokers. Participation in the “chain of distribution” connotes seeking out investors to purchase initial public offerings or invest in private placements or direct participation _____, engaging in wholesaling of securities to brokers, or _____. Neither Malouf nor anyone else at UASNM participated in the “chain of distribution” of securities.</p>
3	<p>From 2008 to May 2011, Malouf was not registered with the Commission as a broker or dealer and he was not associated with a broker or dealer.</p>
	<p>Pre-Trial Joint Stipulation 12, FOF #292.</p>
	<p>UNDISPUTED</p>
4	<p>On approximately January 1, 2008, Malouf sold a Raymond James Financial Services (“RJFS”) broker-dealer branch that he founded in 1999 to his then branch manager Maurice Lamonde.</p>
	<p>Pre-Trial Joint Stipulation 13, FOF #293.</p>
	<p>UNDISPUTED</p>
5	<p>From 2008 into 2011, Lamonde made a series of ongoing payments to Malouf for the RJFS branch.</p>
	<p>Pre-Trial Joint Stipulation 14, FOF #294.</p>

	UNDISPUTED
6	Lamonde paid close to 100% of the commissions for Malouf's bond trades to Malouf.
	<p>Q But what I'm trying to reconcile and understand is, it sounds like your methodology for making payments to Mr. Malouf was actually to pay him close to 100 percent of the --</p> <p>A Bond trades.</p> <p>Q -- bond trades, correct?</p> <p>A Yes.</p> <p>Q So that isn't 40 percent of the branch revenue. And it seems to be tied, actually, to the bond trades. So what you were actually doing was giving Mr. Malouf close to 100 percent of the income from the bond trades, correct?</p> <p>A Just the bond trades.</p> <p>Q Just the bond trades, correct?</p> <p>A Right.</p> <p>Q But that wasn't your agreement, that's your testimony?</p> <p>A I'm sorry, say that again.</p> <p>Q You are essentially admitting, yes, I did try to pay Mr. Malouf close to 100 percent of the bond trade revenue, but I didn't have that agreement with him. I had this 40 percent agreement and then I had a prepayment arrangement, but I never kept track of it. I hoped it would work out.</p> <p>A That's true.</p> <p>Q That's --</p> <p>A Poor business, but it's true.</p> <p>Q Putting aside the agreement, would you agree with me that the reality of what happened is that you passed along all or almost all of the commissions that Mr. Malouf made from Raymond James bond trading on behalf UASNM back to Mr. Malouf?</p> <p>A Yes.</p> <p style="text-align: center;">Exhibit 239 – Lamonde Tr. at 204:16-205:24; Exhibit 203; FOF #20.</p>
	<p style="text-align: center;">DISPUTED</p> <p>There is insufficient evidence LaMonde paid commissions to Malouf for Malouf's bond</p>

	<p>trades. The Division has failed to establish which trades Malouf directed or tie any payments by LaMonde to any such trades. On a quarterly basis, there are substantial differences between the commissions earned by LaMonde and the payments to Malouf that are inconsistent with payment of "100% of the commissions"</p> <p>See Exhibit 203, Malouf's PFOF 124, 125</p>
7	<p>Malouf thought that the commissions from his bond trades were his money.</p>
	<p>Q What are those payroll advances for? A Again, it would have been to pay Dennis. Q Once again, this situation where Malouf makes a trade, he knows he has money coming to him, and he can't wait even a couple weeks to get the money? He wants the money right away? A Yes. Q Let's talk about that for a little bit. A His idea was it's his money and he could get it when he wanted it. Q That was his understanding? A Yeah.</p> <p>Exhibit 239 – Lamonde Tr. at 195:1-12.</p>
	<p>DISPUTED</p> <p>The Division relies solely on the unreliable hearsay testimony of LaMonde, under duress, without counsel, and without any cross-examination. There is no corroborating testimony from Mr. Malouf or anyone else. At most this is an opinion or speculation by LaMonde, who could have no ideas what Malouf thought.</p>
8	<p>Lamonde's payments to Malouf were based on bond-trade commissions from the accounts that Malouf sold to Lamonde (44Y5).</p>

	<p>But that doesn't answer for me how much you decided to pay beyond the 40 percent. How much did you decide to prepay? And your testimony was something like, well, it's based on the commissions. And that's not specific enough for me. How did you decide how much to prepay, based on the amount of commissions you were getting? Do you understand my question?</p> <p>A Yes.</p> <p>Q What is the answer?</p> <p>A It was based on the commissions generated from 44Y5.</p> <p>Q Those are the accounts that Mr. Malouf transferred to you, correct?</p> <p>A Correct.</p> <p>Exhibit 239 – Lamonde Tr. at 184:1-15; FOF # 221.</p>
	<p>DISPUTED</p> <p>LaMonde's testimony is internally contradictory and wholly unreliable. He also testified that the payments were a percentage of gross commissions for the whole branch, not just accounts transferred to 44Y5.</p> <p>Q. One element was the four-year payout period. How (did) the amount of the payout, did you discuss that with Mr. Malouf?</p> <p>A. It was going to be a percentage of the growth.</p> <p>Q. Percentage of the gross what?</p> <p>A. Commissions.</p> <p>Q. Gross commissions earned by --</p> <p>A. The branch.</p> <p>Q. As a whole?</p> <p>A. Correct.</p> <p>Q. So, every commission that the branch earned, Mr. Malouf was going to be entitled to 40 percent of that?</p> <p>A. Correct.</p> <p>Q. For four years?</p> <p>A. Correct.</p> <p><i>Malouf Trial Transcript 11/24/14 at 1595:20-1596:11</i></p>
9	<p>Malouf used Raymond James to trade bonds because he got paid for those bond transactions, and he was not ashamed of receiving \$1.1 million in commissions because</p>

	<p>Malouf thought he did a good job.</p>
	<p>Q. Okay. And in fact, one of the reasons you chose to trade through Raymond James was because you got paid; right?</p> <p>A. Yes.</p> <p>Q. And I believe you previously testified that you were not ashamed of receiving any of the commissions from the bond trades that you did do, and the revenue of the branch because you did a good job?</p> <p>A. That is correct.</p> <p>Q. And do you acknowledge that between 2008 and May of 2011, you received approximately 1.1 million dollars from Mr. Lamonde?</p> <p>A. Approximately.</p> <p>Malouf Trial Tr. 11/20/14 at 941:25-942:12; FOF #176; FOF #177.</p>
	<p>DISPUTED</p> <p>Malouf said that if he could get the same bond at the same price from either RJFS or another broker, he was not obligated to direct a trade to the other broker simply because he might benefit in some way if the trade went through RJFS. Whether Malouf would benefit was just one of several reasons Malouf chose to trade through RJFS. He also used RJFS for bond trading based on a number of other reasons.</p> <p><i>See Malouf's PFOF 163, 164</i></p> <p>A That is correct. I mean at the end of the day, I looked at all the information they sent me, so I had the information of what they had available. They would send me the e-mails, and I'd see Griffin, Kubik would have whatever FLBs that I'd have. And I'd look at them, and I'd go out and look, and I'd find something better. So why buy this when I have that? You're going to say, well, because you got paid. Well, you're absolutely right. There's no doubt about it. I didn't need to pay Griffin, Kubik if I got the same bond at the same bid at the same price. There was no obligation to do that.</p> <p>Q So these e-mails that you were getting from Griffin, Kubik --</p> <p>A And various others.</p> <p>Q -- and various others had the exact bonds you were looking at?</p> <p>A I don't know that all the time. Sometimes, yes. But a federal home loan bank is a federal home loan bank. If it matures in 2010 and it matures in 2008 or '9, and I have an '8 or '9, it may be a different issue with the same coupon, but it actually is very close.</p>

	<i>Ex. 231, Malouf Investigative Testimony Transcript at 259:6-260:4</i>
10	Lamonde told Calhoun that the checks from Lamonde to Malouf were commissions from Raymond James.
	<p>Q. And what was your understanding of what those checks related to?</p> <p>A. I was told they were commissions from Raymond James.</p> <p>Q. Who told you that?</p> <p>A. Well, when I first started there, Dennis told me that his big clients were Raymond James's clients and then Maurice told me that those were commission checks from Raymond James.</p> <p>...</p> <p>Q. Did you ever have any discussions with Maurice Lamonde about these checks?</p> <p>A. Yes, I asked him one time what they were for.</p> <p>Q. And what did he say?</p> <p>A. He said that they were commission checks.</p> <p>Malouf Trial Tr. 11/21/14 at 1243:13-1243:21---1244:22-1245:1.</p>
	<p>DISPUTED</p> <p>During her investigative testimony Calhoun testified that when she started working at UASNM in 2004 Malouf received commission checks (Malouf still owned Branch 4GE at that time and was registered with RJFS). She testified there was no reason for her to think any different later on when Malouf had sold Branch 4GE. She did not testify that LaMonde told her they were commissions during her investigative testimony. Only that she would ask about the memo that LaMonde would allegedly put on the checks – “commission.” When confronted with the checks at the hearing, Calhoun admitted that contrary to her statement about the memo line, none of them actually contained the memo “commission.” She never testified during the investigation that LaMonde told her they were commissions.</p> <p>12 Q During the time periods that you were 13 depositing those checks, what was your understanding 14 of what those checks related to or why Mr. Lamonde 15 was giving checks to Mr. Malouf?</p>

16 A My understanding was they were commission
17 checks from Raymond James clients that Mr. Malouf
18 still had at Raymond James.
19 Q And do you recall how you had that
20 understanding or why you had that understanding?
21 A What I do recall, John, is when I started
22 there in 2004, Dennis, again, had just become the
23 president of UASNM. He had told me from the
24 beginning that his big clients were at Raymond James.
25 He only earned a salary at UASNM because he had to as

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1 the president. Raymond James, or at least Maurice's
2 entity, was there. There was no reason for me to
3 think any different.

4 Q That it wasn't still commissions from his
5 Raymond James work, you mean?

6 A There was no reason for me to think any
7 different that -- yes, I thought they were Raymond
8 James clients and Raymond James commissions.

9 Q Do you recall if Mr. Malouf ever told you
10 that they were commissions from Raymond James? And
11 let me strike that question and re-ask it just so
12 it's clear.

13 Do you recall, during the time period 2008
14 through 2011, whether Mr. Malouf ever told you that
15 the amounts that he was receiving from Mr. Lamonde
16 represented commission payments from Raymond James?

17 A I recall me asking about the memo Maurice
18 would put on the checks, "commission," and Dennis
19 would say yes.

Ex. 227 at 19:12-20:19

**3 Q So, your understanding after 2007, once the
4 branch had been sold, they were commissions because
5 that's what they had been previously; right?**

6 A My understanding all along was that they were
7 commission checks. I was told they were Raymond
8 James's clients, but I always knew they were commission
9 checks.

Malouf Trial Transcript 11/21/14 at 1256:3-9

	<p>3 Q Do you see the column "memo" there? 4 A Yes, I do. 5 Q Okay. And that would be the information 6 recorded from the memo line of the checks from Mr. 7 Lamonde to Mr. Malouf. 8 A Okay. 9 Q You can only see a portion of it here blown 10 up. Maybe we can just go through the whole thing. 11 Do you see anywhere there the word 12 "commission" on the memo lines? 13 A I do not on this, no. 14 Q Do you see the word "commission" in any of 15 the memo lines there? 16 A No, I do not. 17 Q Okay. There are several pages to this. I'll 18 represent to you that the word "commission" does not 19 appear in any of those fields. Would that surprise 20 you? 21 A That would not surprise me, no.</p> <p><i>Malouf Trial Transcript 11/21/14 at 1258:3-21</i></p>
11	This Proposed Finding of Fact intentionally left blank.
12	In 2009 and 2010, Malouf argued with Lamonde about the amount of almost every commission check.
	<p>Q. And were the checks actually handed to you by Mr. Lamonde? How did you get the checks?</p> <p>A. 2009 and '10 definitely handed to me by Mr. Lamonde.</p> <p>Q. Okay. And do you know why Mr. Lamonde was giving you the checks as opposed to Mr. Malouf?</p> <p>A. I was under the impression so -- well, one Dennis wouldn't be there and would be calling wanting the checks deposited right away and the other is to avoid a conflict between the two of them.</p> <p>Q. What do you mean by that, to avoid a conflict?</p> <p>A. In 2009 and '10 they argued about the amount of the check every time one was given.</p>

Q. And about the amount. Can you be more specific?

A. From what I recall, Mr. Malouf wasn't happy with the amount of the check, and Mr. Lamonde would say no, that's right, that's what it is. And then they would have an argument about it, and then it would be passed to me to be deposited.

Malouf Trial Tr. 11/21/14 at 1245:5-1246:24.

DISPUTED, though Calhoun made this claim the credibility of any of her testimony is questionable. No other witness has corroborated her testimony, neither Malouf at the hearing or during the investigation, nor LaMonde during the investigation. The legitimacy of Calhoun's testimony is clouded by her fear of being fired by Kopczynski, her friendship with Malouf's ex-wife, and the inconsistency between her investigative testimony and testimony at the hearing. Regardless, whether or not Malouf and LaMonde argued about the amounts of checks is immaterial to the propriety of the payments.

13 Malouf sometimes asked Lamonde "where is my check" in the presence of at least Hudson or Calhoun.

FOF #60.

UNDISPUTED

14 Lamonde Referred to the Payments he made to Malouf as Commissions on his 2008, 2009 and 2010 Tax Returns.

MAURICE L. LAMONDE, LTD. 6103	
Form 1120S, Page 1, Line 19 Other Deductions	
AUTO EXPENSE	1,694.
PHONE	1,254.
ACCOUNTING	784.
COMMISSIONS	665,149.
INSURANCE	859.
OFFICE EXPENSE	646.
MISC PROFESSIONAL FEES	2,199.
FAX & PRINT LEASE	2,146.
RESEARCH - PRINCIPAL	4,244.
REGISTRATION FEES - PRINCIPAL	4,209.
POSTAGE	819.
FRANCHISE FEES - PRINCIPAL	3,000.
STATE REGISTRATION	3,700.
FRANCHISE FEES - STAFF	19,600.
RESEARCH FEES - STAFF	8,038.
Total	847,127.

MAURICE L. LAMONDE, LTD. 91-2146103	
Form 1120S, Page 1, Line 19 Other Deductions	
COMMISSIONS	493,536.
RESEARCH	891.
TRAVEL - STAFF	2,243.
POSTAGE	1,824.
ACCOUNTING	881.
RESEARCH SERVICES	2,062.
BATHING JAMES OPERATING EXPENSES	12,525.
PHONE	1,819.
EXCETERA INSURANCE	1,431.
AUTO	3,300.
OFFICE SUPPLIES	386.
Total	628,295.

MAURICE L. LAMONDE, LTD. 6103	
Form 1120S, Page 1, Line 19 Other Deductions	
RESEARCH	891.
RESEARCH - STAFF & COMMISSIONS	12,120.
COPY AND FAX	2,434.
POSTAGE	1,800.
ACCOUNTING	784.
AUDIT	800.
IN RESEARCH EXPENSES	183.
TRAVEL	2,243.
OFFICE SUPPLIES	720.
RESEARCH	2,810.
PHONE PRINT	21.
AUTO 2010 BY G. 10	1,311.
Total	32,842.

Form 1120S, Page 2, Schedule A, Line 8 Schedule A, Other Costs	
COMMISSIONS	314,928.

	Exhibit 76, Exhibit 77, Exhibit 78; FOF #44.
	<p>UNDISPUTED that LaMonde referred to the payments as “Commissions” on the tax returns, but DISPUTED the reference is accurate or definitive as to the nature of the payments. Don Miller, a well credentialed and experienced CPA, testified that LaMonde did not report the payments correctly.</p> <p>13 Q Could you explain why that was done on this 14 draft, please?</p> <p>15 A Sure. This business -- when Dennis -- Mr. 16 Malouf, dropped off his tax information for me to begin 17 the return for this year, he provided me -- he told me 18 and he also provided me a document that stated that he 19 sold the business for that year. I believe it was 20 January 1, 2008, was the effective date of the sale. 21 The same individual that bought the business 22 from Mr. Malouf also sent him a Form 1099 for 23 commission income or revenue for services, which was 24 inconsistent with the sale. The same individual who 25 signed the sale document also sent that 1099. So, at 1 this point of preparing the return, we felt that it was 2 an incorrect 1099. 3 So, we were going to have a matching problem 4 with the service in that these were actually the sale 5 proceeds that the buyer was paying the seller for the 6 business that he purchased, and at this point we felt 7 that it was an inadvertent 1099. 8 So, in order to get the correct result on the 9 tax return, but at the same time deal with the fact 10 that it appeared to us an inadvertent or incorrect 1099 11 was filed, we put the 1099 in the return initially, and 12 then we back it out so that it zeros out at this point. 13 And then we report those same proceeds as a sale item 14 on the Schedule D sale of a business schedule. 15 And then, had we completed the return, I 16 would have followed up with the person who submitted or 17 filed this Form 1099 and asked them to correct it.</p> <p><i>Malouf Trial Transcript 11/24/14 at 1577:13-1578:17</i></p>
15	Lamonde provided Malouf with IRS Form 1099s for the payments just as Malouf had provided his brokers with Form 1099s prior to selling the branch to Lamonde.

	<p>SCHEDULE C (Form 1040) Department of the Treasury Internal Revenue Service (99)</p> <p style="text-align: center;">Profit or Loss From Business (Sole Proprietorship) Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B. Attach to Form 1040, 1040NR, or 1041. See instructions for Schedule C (Form 1040).</p> <p style="text-align: right;">OMB No. 1545-0074 2008 Attachment Sequence No. 09</p> <p>Name of proprietor DENNIS J. MALOUF</p> <p>A Principal business or profession, including product or service (see page C-3) INVESTMENT BROKER</p> <p>C Business name, if no separate business name, leave blank. RAYMOND JAMES</p> <p>E Business address (including suite or room no.) City, town or post office, state, and ZIP code ALBUQUERQUE, NM 87110</p> <hr/> <p>SCHEDULE C (Form 1040) Department of the Treasury Internal Revenue Service (99)</p> <p style="text-align: center;">Profit or Loss From Business (Sole Proprietorship) Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B. Attach to Form 1040, 1040NR, or 1041. See instructions for Schedule C (Form 1040).</p> <p style="text-align: right;">OMB No. 1545-0074 2009 Attachment Sequence No. 09</p> <p>Name of proprietor DENNIS J. MALOUF</p> <p>A Principal business or profession, including product or service (see page C-2) INVESTMENT BROKER</p> <p>C Business name, if no separate business name, leave blank. RAYMOND JAMES</p> <p>E Business address (including suite or room no.) City, town or post office, state, and ZIP code ALBUQUERQUE, NM 87110</p>
	<p>Exhibit 238 at 10, Exhibit 14; FOF #44, FOF #48.</p> <p>DISPUTED. Although LaMonde did provided Malouf with IRS Form 1099s, it is disputed that LaMonde's use of 1099s was anything like what Malouf had done for his brokers prior to selling the branch to LaMonde. Don Miller testified that the 1099s issued by LaMonde were issued in error. Nobody has challenged the propriety of 1099s issued by Malouf to his brokers.</p> <p>See Response to PFOF 14 above.</p>
16	<p>Lamonde's payments to Malouf totaled \$1,068,084.13, which equaled 99.4% of Lamonde's commissions.</p>

Comparison of Commissions Earned by Lamonde from Malouf's Trades with Payments Made by Lamonde to Malouf			
	Lamonde Commissions	Payments by Lamonde to Malouf	Difference (Branch Commission - Amount Paid by Lamonde)
Total for First Quarter 2008	\$91,349.53	\$95,760.05	(4,410.52)
Total for Second Quarter 2008	\$123,649.29	\$125,065.00	(1,415.71)
Total for Third Quarter 2008	\$82,718.05	\$120,171.48	(37,453.43)
Total for Fourth Quarter 2008	\$85,062.95	\$108,100.00	(23,037.05)
Total for Year 2008	\$382,779.82	\$449,096.53	(66,316.71)
Total for First Quarter 2009	\$40,959.18	\$57,850.45	(16,891.27)
Total for Second Quarter 2009	\$34,583.93	\$48,668.32	(14,084.39)
Total for Third Quarter 2009	\$125,761.94	\$146,640.48	(20,878.54)
Total for Fourth Quarter 2009	\$150,729.84	\$113,051.00	37,678.84
Total for Year 2009	\$352,034.89	\$366,210.25	(14,175.36)
Total for First Quarter 2010	\$130,052.13	\$121,181.29	8,870.84
Total for Second Quarter 2010	\$32,962.32	\$22,607.00	10,355.32
Total for Third Quarter 2010	\$66,813.50	\$29,786.00	37,027.50
Total for Fourth Quarter 2010	\$71,598.89	\$64,168.50	7,430.39
Total for Year 2010	\$301,426.84	\$237,742.79	63,684.05
Total for First Quarter 2011	\$37,660.27	\$14,482.00	23,178.27
Total for Second Quarter 2011	\$552.56	\$552.56	0.00
Total for Year 2011	\$38,212.83	\$15,034.56	23,178.27
TOTAL	\$1,074,454.38	\$1,068,084.13	6,370.25

Sources for Trial Exhibit 203 - Payments-Commissions Comparison:

Binder 1 - Maurice Lamonde's 2008 - 2011 Wells Fargo bank statements (contained in Testimony Exhibits 104, 105, 106, & 107)

Binder 3 - Selected Raymond James Payroll Statements for 2008 - 2011 relating to Maurice Lamonde.

Trial Exhibit 201 - Payments by Lamonde to Malouf

Exhibit 203.

UNDISPUTED

17

From 2008 through May 2011, Malouf received transaction-based compensation from Lamonde for the bond transactions at issue in this case.

See Proposed Findings of Fact ##4-16.

DISPUTED

The Division has failed to prove the compensation Malouf received was tied to any

	particular transactions. The Division has not proven which transactions Malouf directed or been able to connect any of the payments to any transactions directed by Malouf. From 2008 through the beginning of 2011 there are only two quarters during which the payments made by LaMonde to Malouf are within 5% of the commissions earned. The average variance between the payments and commissions over the entire time frame is almost 30%. See Malouf's PFOF 124 and 125.
18	The Purchase of Practice Agreement ("PPA") between Malouf and Lamonde was signed, notarized, and provided to Raymond James in June 2010, not January 2008, the purported date noted on the front of the PPA.
	<p>THIS AGREEMENT is made and entered into this, the <u>2</u> day of <u>Jan</u>, 2008 by and between <u>DENNIS MALOUF</u> ("Seller"), a financial advisor currently registered with Raymond James Financial Services, Inc. ("RJFS"), a Financial Industry Regulatory Authority, Inc. ("FINRA") Broker Dealer and <u>MAURICE LAMONDE</u> ("Buyer"), also a financial advisor currently registered with RJFS, as of the date set forth below.</p> <p>IN WITNESS WHEREOF the parties hereto hereby execute this Agreement as set forth below this:</p> <p><u>11th</u> day of <u>June</u>, 2010.</p> <p>(Seller signs) <u>[Signature]</u> Typed name, Seller <u>DENNIS MALOUF</u></p> <p><u>[Signature]</u> Typed name, Buyer <u>MAURICE LAMONDE</u></p> <p>OFFICIAL SEAL KATHYRN M. JOHNSON Notary Public State of New Mexico My Comm. Expires <u>2/28/2011</u></p> <p><u>[Signature]</u> Kathryn M. Johnson</p>
	Exhibit. 97.
	DISPUTED The unnotarized version with an effective date of Jan. 2, 2008, was initialed on every page and signed by Dennis Malouf and Maurice LaMonde. See Ex. 57. Evidence shows only that it was notarized in 2010 and that the notarized version was provided to RJFS in 2010.
19	Prior to June 2010, when asked for a written copy of the PPA, Lamonde indicated that he and Malouf were still working on it, and did not provide a signed copy.
	HELLO KIRK ATTACHED IS THE PERSONAL FINANCIAL STATEMENT YOU NEEDED. I'M WORKING ON THE PURCHASE AGREEMENT AND WILL HAVE SARAH TAKE A LOOK AT IT TO MAKE SURE IT'S OK. ALSO SARG DOES NOT HAVE AN ACCOUNT AT RJ.

	<p>BACK A FEW YEARS AND I AM STILL WORKING ON THE AGREEMENT AND WILL SEND IT AS SOON AS WE FINISH IT.</p> <p>Exhibit 60, Exhibit 94; FOF #27.</p>
	UNDISPUTED
20	<p>Lamonde admitted that he and Malouf had no written agreement until June 2010.</p> <p>Q I'm just going to read from Exhibit 60. Your e-mail from May of 2009 says, "I'm working on the purchase agreement and will have Sarah take a look at it to make sure it's okay."</p> <p>A Okay.</p> <p>Q But you never did that?</p> <p>A Probably not.</p> <p>Q Okay.</p> <p>A I don't know. Again, the documentation that we did was -- with Dennis was fly by night.</p> <p>Q What do you mean by "fly by night"?</p> <p>A You had to catch Dennis on the run, that kind of thing. It wasn't -- to be honest, an actual document, this was the agreement that we made. And we had known that was going to be it. And whether I put it in writing February 8th -- or February -- January of 2008 or actually had it written down in 2009 made no difference, because the agreement was the agreement.</p> <p>Q It sounds like -- I want to give you an opportunity --</p> <p>A Okay.</p> <p>Q -- right now. Did you actually enter into an agreement with Mr. Lamonde, written in 2008?</p> <p>A No.</p> <p>Q "No." When did you enter into it?</p> <p>A It would appear it was going to be in June of 2010.</p> <p>Exhibit 239 -- Lamonde Tr. at 163:10-164:13.</p>
	<p>DISPUTED</p> <p>LaMonde's testimony is contradictory from beginning to end. He testified he had a written agreement with Malouf and changed his testimony as a result of the Divisions coercion and threats of perjury. His inconsistent and unreliable testimony cannot be deemed an</p>

	<p>“admission.”</p> <p>13 BY MR. MULHERN: 14 So, ultimately, you did enter into a 15 written purchase of practice agreement with Mr. 16 Malouf? 17 A Yes. 18 Q When did that occur? 19 A January 2008 or December 2007, one or the 20 other. 21 Q So you reached a finalized, written 22 agreement at that point in time? 23 A Correct. 24 Q And your signature, you believe, was on 25 that agreement as well as Mr. Malouf? 1 A Yes. 2 Q And you had gotten that agreement from 3 Raymond James? 4 A Correct. 5 Q And Mr. Bell? 6 A Correct. 7 Q So at any point in time then was your 8 arrangement with Mr. Malouf regarding the sale of 9 the business based on any oral understanding, as 10 opposed to that written agreement? 11 A Just to the extent that I could pay him 12 faster if I needed to or wanted to. 13 Q And that oral understanding, when did 14 that occur? 15 A The same time. 16 Q At the same time? 17 A (Nodding head.) 18 Q Yes? 19 A Yes.</p> <p>See Exhibit 308 at 70:13-71:19</p>
21	<p>The June 2010 PPA between Malouf and Lamonde stated that Lamonde would pay Malouf continuing commissions pursuant to IM-2420-2.</p>
	<p>9. This Agreement shall serve as notice to Raymond James Financial Services (or subsequent FINRA Broker Dealer with which either one of the parties to this Agreement may become licensed) of the parties' agreement to pay continuing commissions/securities related fees in accordance with IM-2420-2 (or its successor provision) under the NASD Conduct Rules as contained in the NASD Manual.</p>

	Exhibit 97 at RJFS-SEC-UASN-000163.
	DISPUTED as to the reference to the "June PPA." See Response to Divisions PFOF 18 above. UNDISPUTED as to what the PPA states.
22	From 2008 through May 2011, Malouf's arrangement with Lamonde did not comply with IM-2420-2 because while still receiving commissions after leaving Raymond James and not registered as a broker dealer, Malouf was affiliated with an investment adviser (UASN) and was engaged in the securities business.
	See Proposed Findings of Fact ##2-16, supra.
	<p>DISPUTED – Nowhere in IM-2420-2 does it state that Malouf could not be affiliated with an investment adviser or engage in the securities business.</p> <p>See Malouf's PCOL 43, 44</p> <p>IM 2420-2 provides that "the payment of continuing commissions in connection with the sale of securities is not improper so long as the person receiving the commissions remains a registered representative of a member of the Association. However, payment of compensation to registered representatives after they cease to be employed by a member of the Association — or payment to their widows or other beneficiaries — will not be deemed in violation of Association Rules, provided bona fide contracts call for such payment."</p> <p>Q All right. So, you're reading that paragraph. Is there anything in there that references retirement as a requirement?</p> <p>A The information about how he can pay his widow or beneficiary?</p> <p>Q Well, it says, "to pay him or to his widow or other beneficiary."</p> <p>A Right. Right.</p> <p>Q So nothing in there about retirement?</p> <p>A Not to my knowledge.</p> <p><i>Malouf Trial Transcript 11/20/14 at 1044:12-21</i></p>

B. Investment Advisers Act § 206(1) and (2): employ any device, scheme, or artifice to defraud or engage in any transaction, practice or course of business which operates as a fraud or deceit

1. Malouf's failure to disclose his arrangement to receive payments from Lamonde

23	From January 2008 to May 2011, Malouf had an agreement with Lamonde under which he received payments from Lamonde that were dependent upon commissions Lamonde received from Raymond James that were generated, in whole or in part, by
----	---

	<p>bond trades that Malouf directed to Lamonde and Raymond James.</p>
	<p>Malouf further testified that when he used Raymond James' bond desk to purchase bonds Lamonde was paid a commission and then had money to pay Malouf under their agreement. FOF #175.</p> <p>One of the reasons Malouf chose to trade through Raymond James was because then he got paid. FOF #176.</p>
	<p>DISPUTED, See Response to PFOF 6 and 8 above. Malouf's agreement with LaMonde was memorialized in the PPA. It required LaMonde to pay Malouf based upon the Branch 4GE revenues. The branch generated revenues from commissions it earned.</p>
24	<p>Malouf's agreement with Lamonde called for Lamonde to pass along almost all of the commissions that Malouf made from RJFS bond trading on behalf of UASNM clients back to Malouf.</p>
	<p>Q Putting aside the agreement, would you agree with me that the reality of what happened is that you passed along all or almost all of the commissions that Mr. Malouf made from Raymond James' bond trading on behalf UASNM back to Mr. Malouf?</p> <p>A Yes.</p> <p>Exhibit 239 – Lamonde Tr. at 205:19-24.</p>
	<p>DISPUTED LaMonde's testimony is internally inconsistent and is unreliable hearsay because it is the product of testimony coerced under duress while LaMonde was unrepresented by counsel. There has been no corroborating evidence from any other witness or documents that there was an agreement to "pass along almost all of the commissions" to Malouf.</p> <p>See Response to PFOF 6 above, and Malouf's PFOF 124, 125.</p>
25	<p>Malouf's agreement with Lamonde created a clear conflict of interest.</p>
	<p>Malouf agrees that the ongoing payment arrangement with Lamonde created a clear conflict of interest ever since he entered into the arrangement with Lamonde in early 2008. FOF #178.</p> <p>"Without a doubt," disclosure regarding the ongoing payments Malouf was receiving from Lamonde should have been in all the relevant ADV disclosures. FOF #193</p> <p>Hudson viewed Malouf's arrangement with Lamonde as a potential conflict of interest. FOF #127.</p>

	<p>When Ciambor learned in June of 2010 that Malouf had been receiving payments from Lamonde as a result of UASNM bond trades through the RJ branch he believed that was a clear conflict of interest. FOF #151.</p>
	<p>UNDISPUTED that the agreement created a conflict of interest. Although the existence of a conflict of interest, in and of itself, is not impermissible.</p>
26	<p>Malouf's conflict of interest was not disclosed to UASNM investors.</p>
	<p>Mr. Malouf did not tell Ms. Owens that he would receive payments related to bond trades placed through Raymond James. FOF #328.</p> <p>Mr. Malouf did not tell Mr. Moriarty that he would receive payments related to bond trades placed through Raymond James. FOF #330.</p> <p>At least some of UASNM's ADVs between 2008 and 2011 did not disclose that Mr. Malouf sold his RJFS branch to Mr. Lamonde and was receiving ongoing payments from Mr. Lamonde in connection with that sale. FOF #8.</p> <p>Ciambor believes that disclosure of the financial incentive for UAS to route trades through RJ, that was ultimately made in March 2011, should have been disclosed in all form ADVs ever since Malouf's arrangement with Lamonde in 2008. FOF #154.</p>
	<p>DISPUTED</p> <p>The Division does not dispute that the conflict with Branch 4GE was disclosed from 2004 through August 2008, and again in March 2011 in Forms ADV. Mr. Moriarty had constructive notice of the conflict long before Malouf sold Branch 4GE to LaMonde. Owens was on constructive notice of the conflict when she acknowledged receipt of the February 2008 Form ADV. The Division did not produce any customers who had never received notice of the conflict, or the similar conflict which existed prior to 2008. The only customers to whom the specific conflict would not have been disclosed are any new customers that joined UASNM between August 2008 and March 2011. The Division has not offered evidence that any such customers existed.</p> <p>See FOF 280, Malouf's PFOF 47, 75</p>
27	<p>The statement in UASNM Form ADVs that brokers would not be recommended "based upon any arrangement between the recommended broker and UASNM" was materially misleading given Malouf's arrangement with Lamonde.</p>
	<p>Item 12 of UASNM's Form ADV Part II, dated April 12, 2010, disclosed that the broker recommended by UASNM was not "based upon any arrangement between the recommended broker and UASNM," and, instead, was "dependent upon a number of factors including the following: Trade execution, custodial services, trust services,</p>

	<p>recordkeeping and research, and/or ability to access a wide variety of securities. UASNM reviews, on a periodic and systematic basis, its third-party relationships to ensure it is fulfilling its fiduciary duty to seek best execution on client transactions.” FOF #9.</p> <p>At least some of UASNM’s ADVs between 2008 and 2011 did not disclose that Mr. Malouf sold his RJFS branch to Mr. Lamonde and was receiving ongoing payments from Mr. Lamonde in connection with that sale. FOF #8.</p>
	<p>DISPUTED No arrangement existed between UASNM and any broker. Malouf and Keller recommended brokers based upon a number of factors, not because of any arrangement between UASNM and a broker. Keller said Malouf sought multiple bids from brokers on trades they did together and Ciambor testified he saw evidence of multiple bids and UASNM achieving best execution.</p> <p>See Malouf’s PFOF 59, 61, 62, 101, 163, 164</p>
28	<p>The statement in UASNM’s Form ADVs that employees of UASNM do not receive any commissions or fees from recommending [brokerage] services” was materially misleading given Malouf’s arrangement with Lamonde.</p>
	<p>Item 12 of UASNM’s Form ADV, Part II, dated April 12, 2010, affirmatively represented that “employees of UASNM are not registered representatives of Schwab, Raymond James or Fidelity, and do not receive any commissions or fees from recommending these services.” FOF #10.</p>
	<p>DISPUTED. The statement in the April 12, 2010 Form ADV was accurate. No UASNM employees were registered representatives of Schwab, RJFS, or Fidelity. No UASNM employees received any commissions or fees in exchange for recommending the services of any broker. The only payments received by Malouf were for the sale of Branch 4GE, they did not constitute “commissions or fees” for recommending services.</p> <p>See Malouf’s PFOF 86, 124, 132, 133</p>
29	<p>UASNM’s failure to disclose that Malouf was receiving payments from Lamonde for trades routed through Lamonde’s Raymond James branch was materially misleading.</p>
	<p>At least some of UASNM’s ADVs between 2008 and 2011 did not disclose that Mr. Malouf sold his RJFS branch to Mr. Lamonde and was receiving ongoing payments from Mr. Lamonde in connection with that sale. FOF #8.</p>
	<p>DISPUTED it was not proven that the information was materially misleading. Mr. Moriarty and Ms. Owens had constructive notice of that Malouf could receive payments from Branch 4GE, and decided to remain customers of UASNM anyway. Customer</p>

	<p>Carl Shaw Carl Shaw testified that it did not matter to him where the trades were directed or the costs associated with transactions.</p> <p>7 Q With respect to fees or charges for 8 transactional aspects of your account, do you have an 9 understanding as to whether there are charges 10 associated with making transactions?</p> <p>11 A I know there were charges. Wasn't really 12 aware, nor did I pay attention to amounts. I knew that 13 there were fees. So -- and I paid the fees. And 14 again, at least in my mind, as I operated my business, 15 I let Dennis operate his, and operate with my money, 16 because the performance, for me, was what I was looking 17 for and that's what I got. In terms of nickel -- 18 trying to figure out what little commission or what was 19 being charged to me didn't matter to me.</p> <p>20 Q Okay. So, from the transactional cost aspect 21 to the mechanical of those, that was not important to 22 you?</p> <p>23 A I don't know that business, so I don't know 24 what's -- what's standard, what's not standard.</p> <p>25 Q Mm-hmm. If on a transaction in your account 1 the charge affiliated with that transaction was half a 2 percent versus one percent, would that be material to 3 you?</p> <p>4 A No.</p> <p>5 Q Is it more important the returns that you 6 earned on your account?</p> <p>7 A That's correct.</p> <p><i>Malouf Trial Transcript 11/21/14 at 1506:7-1507-7</i></p> <p>The lack of disclosure was also not materially misleading because there were other disclosures putting customers on notice of the possibility of payments from RJFS or that Malouf was associated with RJFS. These other disclosures put customers on notice regarding affiliations with RJFS and was sufficient to allow them to inquire further or decide not to invest through UASNM.</p> <p>[CITE]</p>
30	<p>The statements on UASNM's website that:</p> <p style="text-align: center;">Uncompromised objectivity through independence, UASNM is not</p>

	<p>owned by any product, company nor compensated by any commissions. This allows us to provide investment advice devoid of conflicts of interest. UASNM may place trades through multiple sources ensuring that the best cost/service/execution mix is met for its clients.</p> <p style="text-align: center;">And</p> <p style="text-align: center;">We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients' portfolios.</p> <p>were materially misleading in view of Malouf's arrangement with Lamonde.</p>
	<p>At times, between 2008 and 2011, UASNM's website made the following statements:</p> <p>"Uncompromised objectivity through independence, UASNM is not owned by any product, company nor compensated by any commissions. This allows us to provide investment advice devoid of conflicts of interest. UASNM may place trades through multiple sources ensuring that the best cost/service/execution mix is met for its clients."</p> <p>"We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients' portfolios." FOF #12.</p> <p>Mr. Malouf previously testified that he "probably read" statements on UASNM's website in 2008 about UASNM being independent and not charging commissions. FOF #191.</p> <p>While Malouf testified that he may not have read every work of UASNM's website, he was familiar with its contents in the 2008, 2009, and 2010 time frame. FOF #189</p>
	<p>DISPUTED the statements on the website were misleading from 2005 because of relationships between Kopczynski and National Advisors Trust Company and Secured Partners and Hudson's relationship with NATC, not solely because of any arrangement Malouf had. Hudson and Kopczynski were advised in this regard in 2007 and chose to do nothing until 2012, after Malouf had left UASNM, in response to an SEC Examination.</p> <p>Malouf's PFOF 155, 156</p>
31	<p>UASNM marketed itself as being independent and free of commissions, which was materially misleading given Malouf's arrangement with Lamonde.</p>

	UASNM marketed itself as “independent,” meaning that they were fee only and did not take commissions. FOF #129.
	DISPUTED. See Response to PFOF 30 above. Further, UASNM was fee only and did not in fact take any commissions. Malouf’s PFOF 86.

2. Malouf’s failure to seek best execution

32	UASNM’s marketing materials told clients that brokers would be recommended “based on the broker’s cost, skill, reputation, dependability, and compatibility with Clients, and not upon any arrangement between the recommended broker and UAS.”
	Clients wishing to implement UAS’s advice are free to select any broker and/or dealer that they wish and are so informed. Those Clients who wish UAS to recommend a broker will receive a recommendation based on the broker’s cost, skill, reputation, dependability, and compatibility with Clients, and not upon any arrangement between the recommended broker and UAS. Exhibit 24 at MaloufSEC000559.
	UNDISPUTED
33	An investment advisor may not rely solely on a broker’s trading platform, such as BondDesk, to fulfill his fiduciary duty of best execution.
	Q [McKenna] I understand that, and you’ve testified to that, I think, a couple of times today. My question is a simple one. Did you understand that you had the ability, as an investment advisor, to put off your best execution fiduciary duty to BondDesk? A [Malouf] I – no. Malouf Trial Tr. 11/20/2014 at 1147:1-7. <u>3E) Use of a Single Broker to Effect Bond Trades, Even Where that Broker has Multiple Dealers’ Bid-Ask Pricing Cannot Satisfy Best Execution:</u> Exhibit 243, Gibbons Report at 28-29.
	UNDISPUTED , but Malouf did not rely solely on BondDesk. BondDesk is a tool that can assist in achieving best execution, and the Division’s expert agreed it was a good place to find bond bids/asks. See FOF 263, Malouf’s PFOF 4, 11, 149, 164

34	Simply trading through a broker like Raymond James does not satisfy an investment advisor's fiduciary duty of best execution.
	<p>Q [McKenna] And is your testimony that if you trade through Raymond James, and Raymond James meets its duty of best execution as a broker-dealer, then you have, as a result of that, met your fiduciary duty of best execution as an investment adviser?</p> <p>A [Malouf] I – the way you're phrasing the question I guess is on me. And I just – I don't understand. I mean, each custodian has the exact same best execution review, and if I can't rely on that information I'm not sure what I can do to rely on a – so, the answer would be, no, I guess I can't.</p> <p>Malouf Trial Tr. 11/20/2014 at 1147:14-24.</p> <p><u>3E) Use of a Single Broker to Effect Bond Trades, Even Where that Broker has Multiple Dealers' Bid-Ask Pricing Cannot Satisfy Best Execution:</u></p> <p>Exhibit 243, Gibbons Report at 28-29.</p>
	<p>DISPUTED. Trading through a broker like Raymond James may satisfy an investment advisor's duty of best execution if, after considering the various factors set forth in the SEC's guidance, it turns out the broker consistently provide the best execution. Malouf considered many factors when choosing to trade through RJFS. Keller placed 50-60% of his own trades through RJFS and has not been accused of failing to satisfy his duty of best execution. The Division's own expert acknowledged that whether you need to get multiple bids from different brokers depends upon the circumstances.</p> <p>See FOF 381, COL 23, Malouf's PFOF 59, 149, 164</p>
35	To seek best execution an investment advisor generally must obtain competing bid or ask prices from more than one broker-dealer.
	<p>There is a minimum standard that must be met when considering whether or not advisors seek best execution for their clients.</p> <p>The minimum standard focuses on three basic elements:</p> <ol style="list-style-type: none"> 1. Identifying qualified broker-dealers, 2. Getting alternative bids or asks for the subject security, 3. Having a clear procedure in place to document and evaluate this process. <p>Exhibit 243, Gibbons' Expert Report at 21.</p>

Q [McKenna] Now, would you acknowledge that, in fact, during this time period, you should have gotten multiple bids from different brokers to seek best execution on these bond trades?

A [Malouf] Yes.

Malouf Trial Tr. 11/20/2014 at 935:13-17.

UASNMs process with regard to best execution was to utilize a three bid process where they would get if they could three bids on any security. FOF #133.

Ciambor learned through discussions with Hudson, that UASNMs met its best execution obligations by seeking clarification on pricing in accordance with industry best practice of requesting multiple bids from multiple broker dealers or other counter parties. FOF #145.

From: Mike Ciambor </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MCIAMBOR>
Sent: Thursday, July 28, 2011 2:59 PM
To: Joseph Kopczynski [REDACTED]
Subject: RE: Audit

Joe,

For best execution on bond transactions, we typically recommend that the adviser get multiple bids from brokers to compare the markup on the bonds which will give you an idea which counterparty is providing the best prices. On our previous reviews, we typically had been provided with examples of bid sheets with notes on the pricing available for the same or similar offerings from other brokers.

We were previously under the impression that the feedback on the pricing was being shared among the individuals involved in the portfolio management and trading process, but based on a conversation I had with Kirk a few weeks ago this may not have been as collaborative a process as I first thought. We can work on adding formal procedures to the manual identifying the documentation that needs to be maintained and the personnel that will be involved in the process.

Exhibit 20.

DISPUTED obtaining multiple bids is not a regulatory requirement and the Division's expert acknowledged that whether multiple bids were necessary depends upon the circumstances. Best execution is based upon a number of qualitative and quantitative factors that may not require multiple bids.

FOF 381, COL 23

36	<p>An investment advisor's fiduciary duty of best execution is different than a broker-dealer's lesser duty.</p>
	<p>As a prelude to the discussion of how investment advisors should seek best execution I offer a short discussion of how broker-dealers seek best execution. I do this to emphasize that broker-dealers are subject to different, lower standards than investment advisors because they do not owe a fiduciary duty to their clients.</p> <p>Exhibit 243, Gibbons' Expert Report at 20, see also discussion in Sections 3A and 3B on pages 20-23.</p> <p>Malouf's expert witness, Wolper, admits that Raymond James satisfying its duty of best execution does not mean that Malouf satisfied his. FOF #243.</p> <p>Malouf's expert witness, Denigris admits that Malouf is not governed by Raymond James's markup/markdown policy. FOF #252.</p> <p>Q [McKenna] I understand that, and you've testified to that, I think, a couple of times today. My question is a simple one. Did you understand that you had the ability, as an investment advisor, to put off your best execution fiduciary duty to BondDesk?</p> <p>A [Malouf] I – no.</p> <p>Malouf Trial Tr. 11/20/2014 at 1147:1-7.</p> <p>Q [McKenna] And is your testimony that if you trade through Raymond James, and Raymond James meets its duty of best execution as a broker-dealer, then you have, as a result of that, met your fiduciary duty of best execution as an investment adviser?</p> <p>A [Malouf] I – the way you're phrasing the question I guess is on me. And I just – I don't understand. I mean, each custodian has the exact same best execution review, and if I can't rely on that information I'm not sure what I can do to rely on a – so, the answer would be, no, I guess I can't.</p> <p>Malouf Trial Tr. 11/20/2014 at 1147:14-24.</p>
	<p>UNDISPUTED</p>
37	<p>Malouf told others that he sought multiple bids for his bond trades.</p>

	<p>Q [McKenna] And how did that policy that UASNM conveyed they were employing compare or comport with your understanding of best execution applications?</p> <p>A [Ciambor] It appeared to us that they were seeking clarification on pricing in accordance with industry best practice, requesting multiple bids from multiple broker-dealers or other counterparties.</p> <p>Q And who at UASNM told you that that was their policy, to seek multiple bids?</p> <p>A I believe that came through discussions with Mr. Hudson and Mr. Malouf.</p> <p>Malouf Trial Tr. 11/19/2014 at 726:19-727:4.</p> <p>Q. [McKenna] Okay. So, you testified that you didn't think that Mr. Malouf shopped for the best price; right?</p> <p>A. [Keller] That he said he did And looking backwards, I don't think he did.</p> <p>Malouf Trial Tr. 11/20/2014 at 1203:2-6.</p> <p>Q [McKenna] And did Mr. Malouf ever represent to you, or to anybody else at UASNM, in your presence, that he was utilizing a process of soliciting multiple bids on his bond trades?</p> <p>A [Hudson] Yes. He had opened some DVP accounts in 2008 with – I believe there were three of them. UBS, I think Smith Barney and Morgan Stanley. And we had existing ones with Morgan Keegan and Griffin Kubiak, Stevens and Thompson, maybe Crews & Associates at the time too. So he opened some accounts for that purpose, for the ability to either buy bonds there or at least check with those folks, to verify, and you know, indicated – Mr. Malouf had indicated to us that he, you know, knew the markets, knew what was appropriate, what was customary, in terms of markups. And he sometimes charged a quarter, sometimes a half, sometimes a point, depending upon what was appropriate for that security.</p> <p>Malouf Trial Tr. 11/17/2014 at 169:4-22.</p>
	<p>UNDISPUTED, but the Division has not presented sufficient evidence that Malouf did not periodically seek multiple bids on bond trades.</p>
<p>38</p>	<p>Malouf's own expert witness acknowledges that Malouf's practice was not to</p>

	<p>obtain competitive quotes when placing bond trades through Raymond James.</p>
	<p>19. While Mr. Malouf admitted that he did not obtain competitive quotes from three different broker-dealers each time he placed an order for execution with Raymond James, he was not required to do so.</p> <p>Exhibit 579, Wolper Expert Report at 8, ¶ 19.</p>
	<p>DISPUTED</p> <p>Mr. Wolper clearly states that it was not his practice to obtain competitive quotes from three-broker dealers <i>each time</i> he placed an order, i.e. in every instance. Mr. Wolper did not state that Malouf never obtained competitive quotes. Keller's testimony was that Malouf did obtain multiple bids on trades they did together and that Malouf taught him about getting multiple bids. Ciambor also testified that he saw evidence of multiple bids taking place.</p> <p>Malouf's PFOF 23, 24, 61, 62.</p> <p>19 Q I understand that. I think I'm a little 20 confused now, because I thought you said earlier that 21 selecting Raymond James was sufficient to satisfy Mr. 22 Malouf's duty of best execution? 23 A I said -- 24 Q Did I understand you wrong? 25 A You may have. I'm going to try -- I don't Page 1463 1 remember the exact words that I may have employed, but 2 it is either consistent with his best execution 3 obligation or it goes towards the satisfaction of his 4 best execution obligation. 5 But, I guess the issue I have is, to suggest 6 that the decision to route trade orders to Raymond 7 James was a casual decision blithely made by Mr. 8 Malouf. You know, you can't get lucky, if you ask me, 9 when it comes to fulfilling your best execution 10 obligations. 11 So, what I'm saying is, when he made that 12 decision to route his trade orders to Raymond James, it 13 appears to have been based upon a careful consideration 14 of the quality of the executions that he was getting 15 from Raymond James, based upon his historic experience</p>

	<p>16 working for them, with them, and then, in subsequent, 17 continue to route trades, combined with the deafening 18 silence from Mr. Kopczynski and ACA, who were doing the 19 firm's best execution reviews.</p> <p><i>Malouf Hearing Transcript 11/21/14 at 1462:19-1463:19</i></p>
39	<p>Malouf did not shop around for bids from competing brokers when executing bond trades on behalf of UASNM clients.</p>
	<p>UASNM client accounts. There is no evidence in the case that Malouf regularly obtained multiple price quotes when buying or selling bonds, and Malouf admits that he did not. Similarly there is no indication that Malouf ever bargained for lower prices or for lower commissions. Instead, between 2008 and 2011, Malouf appears to have executed almost all of his clients' trades through RJFS in order to obtain payments from Lamonde.</p> <p>Exhibit 243, Gibbons' Expert Report at 4, ¶ 1.</p> <p>Malouf acknowledged that "it's possible" that had he shopped around, he could probably get a lower bid for his clients. He was also shown a video clip of previous testimony (Exhibit 195, video of St. Tr. at 291:6-18) (Exhibit 194 is written transcript) where he testified as follows:</p> <p style="padding-left: 40px;">"Q: For best execution, couldn't you shop around and get a lower level commission for your client?"</p> <p style="padding-left: 40px;">A: I think – I think that's possible, yeah. I guess you probably could. But the fact is this whole thing was to give me money to put into the California office that has not been talked about today.</p> <p style="padding-left: 40px;">And the—it's been—the truth of the matter is that this has always been acceptable since 99. And now the divorce is going on, it's not. And that's just the way it is.</p> <p style="padding-left: 40px;">I mean, it's been – it's just the way it is. And I could be painted any other way, but that's just the way it is". FOF #174.</p> <p style="padding-left: 40px;">Q [McKenna] Now, would you acknowledge that, in fact, during this time period, you should have gotten multiple bids from different brokers to seek best execution on these bond trades?</p> <p style="padding-left: 40px;">A Yes.</p> <p style="padding-left: 40px;">Q Would you also acknowledge that you did not do that?</p>

A No.

Q You would not acknowledge that?

A I will not acknowledge that.

Q Do you recall testifying differently when you met with Mr. Mulhern and provided investigative testimony?

A I don't recall.

MR. McKENNA: Can we pull up his transcript, which is – what's the exhibit number, 231?

MR. BRICKELL: Yes.

MR. McKENNA: And let's go to page 124. Starting at line 8 and we're going to go to line 19. I'm going to read. This is the question. "At what point in the process would you possibly get bids from other broker-dealers?" Your answer: "I would spot check. It wasn't a situation where I got three bids, like I should have done. Okay? I read best execution, and I looked at the information. I called Raymond James about best execution. They explained how they did it. And it satisfied everything that I thought was necessary to get best execution. There was no formal format. I did check from time to time, but there was nothing religiously set up to say here are three bids. Let's take this one." Did I read that correctly?

A Yes.

MR. McKENNA: You can take that down, Tim.

Q Mr. Malouf, would you acknowledge that you did not send out bids when you wanted to buy a bond for a UAS client, nor would you send out asks when you wanted to sell a bond?

A No.

Q You would not acknowledge that?

A I would not.

MR. McKENNA: Can we pull up his transcript at page 127, please. And let's go to lines 14 to 19. Q And I'm just going to read from your transcript again. "Q.

All right. But other than that process, what else did you do to spot check?" Your answer: "I mean, that's it. I wish I could say I had the bid ask, but I just didn't. I didn't send it out for a bid or a quote, if that's where you're headed." Did I read that correctly?

A You did.

Malouf Trial Tr. 11/20/2014 at 935:13-937:16.

Q [McKenna] And did you ever come – strike that. As of today, in your opinion, Mr. Hudson, did Mr. Malouf in fact seek multiple bids on the bond trades that he was executing on behalf of UASNM clients?

A There's no documentation that he did –

Q Did you look for any documentation?

A Yes, we did. Yes. And there's – the only documentation of a three-bid process were, you know, from other advisers. There are some notations in there that, you know, that he had made a phone call here and there, but it's not consistent and pretty infrequent. He may have done it. Mr. Malouf was not known for being a heavy documenter. But there's no written documentation of it –

Q Okay.

A -- or very little.

Malouf Trial Tr. 11/17/2014 at 170:9-25.

Q. [McKenna] Okay. So, you testified that you didn't think that Mr. Malouf shopped for the best price; right?

A. [Keller] That he said he did and looking backwards, I don't think he did.

Malouf Trial Tr. 11/20/2014 at 1203:2-6.

DISPUTED. Malouf spot checked bond markets daily. Keller's testimony was that Malouf did obtain multiple bids on trades they did together and that Malouf taught him about getting multiple bids. Ciambor also testified that he saw evidence of multiple bids taking place.

Malouf's PFOF 23, 24, 49, 61, 62, 148

40	Malouf acknowledged that had he shopped around among brokers for lower bids on bond sales he probably could have gotten a lower bid for his clients.
	<p>Malouf acknowledged that “it’s possible” that had he shopped around, he could probably get a lower bid for his clients. He was also shown a video clip of previous testimony (Exhibit 195, video of St. Tr. at 291:6-18) (Exhibit 194 is written transcript) where he testified as follows:</p> <p>“Q: For best execution, couldn’t you shop around and get a lower level commission for your client?</p> <p>A: I think – I think that’s possible, yeah. I guess you probably could. But the fact is this whole thing was to give me money to put into the California office that has not been talked about today.</p> <p>And the—it’s been—the truth of the matter is that this has always been acceptable since 99. And now the divorce is going on, it’s not. And that’s just the way it is.</p> <p>I mean, it’s been – it’s just the way it is. And I could be painted any other way, but that’s just the way it is”. FOF #174.</p>
	DISPUTED. FOF 174 states only that Malouf acknowledged “it’s possible” he could have gotten lower bids. He did not admit he probably could have gotten a lower bid. It’s unknown whether he actually could have gotten a lower bid, and the Division has failed to provide evidence that he could actually could have.
41	The evidence showed that in at least some cases, shopping bond trades among brokers resulted in a broker offering a better price than Raymond James.
	Exhibit 218 reflects Keller’s seeking bids for a bond purchase, RJ offering a best price of 106.854 and Schwab offering a best price of 105.753. FOF #204.
	UNDISPUTED, though there was no evidence that UASNMM customers ever paid a higher commission on a trade through RJFS in spite of a lower available price elsewhere. Malouf’s PFOF 146
41-2	By shopping bond trades with other brokers UASNMM adviser Matt Keller was at times able to get RJFS to come down to meet a lower price.

	<p>>> FROM: MATTK <GoldMine User> >> TO: MONICAP <GoldMine User> >> DATE: Thu, 17 Apr 2008 10:54:23 -0600</p> <p>>> RE: bonds to place in Schwab (New Mexico Hospital accounts)</p> <p>>> Hi, Monica. >> Today, I worked with Raymond James to purchase a non-callable US Treas >> bond that matures in September 2011. We purchased 1,500 bonds of CUSII >> 912828FU9. The bonds should be placed in the following Schwab accounts: >> accordingly: >> 1) 8115-9840: 600 bonds >> 2) 1147-7655: 500 bonds >> 3) 2836-3801: 400 bonds >> We paid \$1,606,673.67 for these 1,500 bonds (price of 106.89062). Ty >> Kattenhorn of Smith Barney provided me a quote this morning of 107.055 >> for the same bond and RJ matched Schwab's price of 106.89062. >> Please let me know if you have any questions. Mo said that he will deliver >> the confirm to you tomorrow. I believe that Schwab Value Advantage will >> need to be sold in the above accounts. >> Thanks, >> Matt</p> <p>Exhibit 341.</p>
	<p>UNDISPUTED</p>
<p>42</p>	<p>Malouf traded through Raymond James as opposed to other brokers because then he got paid.</p>
	<p>From 2008-2011, Malouf did the majority of his bond trades on behalf of UASNM clients through RJ. FOF #173.</p> <p>Malouf further testified that when he used Raymond James' bond desk to purchase bonds Lamonde was paid a commission and then had money to pay Malouf under their agreement. FOF #175.</p> <p>One of the reasons Malouf chose to trade through Raymond James was because then he got paid. FOF #176.</p>
	<p>DISPUTED</p> <p>Malouf said that if he could get the same bond at the same price from either RJFS or another broker, he was not obligated to direct a trade to the other broker simply because he might benefit in some way if the trade went through RJFS. Whether Malouf would benefit was just one of several reasons Malouf chose to trade through RJFS. He also</p>

	<p>used RJFS for bond trading based on a number of other reasons. <i>See Malouf's PFOF 163, 164</i></p> <p>A That is correct. I mean at the end of the day, I looked at all the information they sent me, so I had the information of what they had available. They would send me the e-mails, and I'd see Griffin, Kubik would have whatever FLBs that I'd have. And I'd look at them, and I'd go out and look, and I'd find something better. So why buy this when I have that? You're going to say, well, because you got paid. Well, you're absolutely right. There's no doubt about it. I didn't need to pay Griffin, Kubik if I got the same bond at the same bid at the same price. There was no obligation to do that.</p> <p>Q So these e-mails that you were getting from Griffin, Kubik --</p> <p>A And various others.</p> <p>Q -- and various others had the exact bonds you were looking at?</p> <p>A I don't know that all the time. Sometimes, yes. But a federal home loan bank is a federal home loan bank. If it matures in 2010 and it matures in 2008 or '9, and I have an '8 or '9, it may be a different issue with the same coupon, but it actually is very close.</p> <p><i>Ex. 231, Malouf Investigative Testimony Transcript at 259:6-260:4</i></p>
43	<p>Malouf did not shop for the best price for the majority of his bond purchases, he simply purchased from Raymond James.</p>
	<p>Proposed Finding of Fact #39.</p>
	<p>DISPUTED</p> <p>Malouf said that if he could get the same bond at the same price from either RJFS or another broker, he was not obligated to direct a trade to the other broker simply because he might benefit in some way if the trade went through RJFS. Whether Malouf would benefit was just one of several reasons Malouf chose to trade through RJFS. He also used RJFS for bond trading based on a number of other reasons. Malouf considered many of the qualitative factors set forth in the SEC's guidance on best execution in deciding to direct trades to RJFS.</p> <p><i>See Malouf's PFOF 163, 164</i></p> <p>A That is correct. I mean at the end of the day, I looked at all the information they sent me, so I had the information of what they had available. They would send me the e-mails, and I'd see Griffin, Kubik would have whatever FLBs that I'd have. And I'd look at them, and I'd go out and look, and I'd find something better. So why buy this when I have that? You're going to say, well, because you got paid. Well, you're absolutely right. There's no doubt about it. I didn't need to pay Griffin, Kubik if I got the same bond at the same bid at the same price. There was no obligation to do that.</p> <p>Q So these e-mails that you were getting from Griffin, Kubik --</p> <p>A And various others.</p>

Q -- and various others had the exact bonds you were looking at?
 A I don't know that all the time. Sometimes, yes. But a federal home loan bank is a federal home loan bank. If it matures in 2010 and it matures in 2008 or '9, and I have an '8 or '9, it may be a different issue with the same coupon, but it actually is very close.

Ex. 231, Malouf Investigative Testimony Transcript at 259:6-260:4

44

UASNM's trade blotter (Exhibit 30) shows that between January 2008 and May 2011, it traded only \$16,789,390.30 in bonds through other brokers. Thus, 89% of UASNM's bond trades were made through RJFS during the relevant period.

Date	Bond Name	Non RJ Trades	Non RJ Trades	RJ Bond Trades	Total UASNM Bond Trades	% of Trades
		Amount	Yearly Total	Yearly Total	Yearly Total	Through RJ
	MCKINLEY CNTY NM GROSS RCPTS	\$53,729.00				
	US TREAS NOTE	\$100,392.00				
	FED HOME LN BK	\$107,597.00				
	FED HOME LN BK	\$255,937.68				
	US TREAS NOTE	\$206,460.94				
	US TREAS NOTE	\$600,326.11				
	FED HOME LN BK	\$85,851.20				
	FED HOME LN BK	\$270,502.50	\$6,946,765.35	\$46,634,651.91	\$53,561,417.26	87%
2011						
	FED HOME LN BK	\$213,964.00				
	FED FARM CR BK	\$612,858.00				
	US TREAS NT	\$132,030.25				
	FED HOME LN BK	\$597,880.75				
	FED HOME LN BK	\$1,505,744.61				
	FED HOME LN BK	\$54,513.00				
	FED HOME LN BK	\$630,330.00				
	YOUGH SCH DIST PA	\$47,971.50	\$3,755,792.11	\$6,854,750.62	\$10,610,032.53	65%
		\$16,789,390.30	\$16,789,390.30	\$140,819,708.15	\$157,609,098.45	89%

Source for Table Exhibit 207 - Raymond James Trade Proposition Analysis.
 Exhibit 4 - Non RJ Bond Trades (Malouf SEC 032725 Malouf SEC 032725) in Testimony Exhibit 30
 Exhibit 207 - UASNM (USA, U.S. Government Agencies, Banks, & Corporate) Raymond James Trades.

Exhibit 207 at 2 (Summarizing Non-RJ Bond Trades in Exhibit 30).

DISPUTED

Exhibit 30 is not UASNM's trade blotter, it is a spreadsheet specifically created by Hudson during the suit he and Kopczynski filed to remove Malouf from UASNM.

- 12 MR. McKENNA: I want to pull up Exhibit 30 if
- 13 we could, please, Tim. And if you could just blow up
- 14 the heading a little bit so that we can hopefully read
- 15 it.
- 16 Q Mr. Hudson, do you recognize this document?
- 17 I'll represent this is just the first page of a
- 18 multi-page spreadsheet document that goes on.
- 19 A I do recognize it.
- 20 Q Can you tell us what it is, please?

	<p>21 A I believe this was first produced in the New 22 Mexico litigation, but it has been used in many 23 other -- it has been submitted to other people too. 24 And it was -- this first part is all bond trades from 25 the date of UASNM's taking over the business, until 1 5-13-11, which was the date Mr. Malouf was terminated 2 from UASNM</p> <p><i>See Malouf Hearing Transcript 11/17/14 at 101:12-102:1</i></p> <p>6 Q Were you personally involved in pulling the 7 data and creating the spreadsheets that are Exhibit 30? 8 A I was. 9 Q And again, when was this created? 10 A I believe it was first created in response to 11 a discovery request in the New Mexico litigation. 12 Q Would that have been in 2011? 13 A 2011.</p> <p><i>See Malouf Hearing Transcript 11/17/14 at 103:6-13</i></p>
45	<p>Mr. Wolper's (Mr. Malouf's expert) opinion that an investment advisor need not shop amongst competing brokers should be afforded little to no weight because Mr. Wolper has no investment adviser expertise and conflates an investment advisor's fiduciary duty of best execution with a broker-dealer's lesser duty.</p>
	<p>Wolper never provided legal advice to investment adviser on best execution issue. FOF #233.</p> <p>Wolper never provided expert opinions regarding best execution for investment advisers. FOF #234.</p> <p>Wolper does not hold any securities license. FOF #235.</p> <p>Wolper never worked as a regulator of an investment adviser. FOF #236.</p> <p>Wolper never traded bonds for a client. FOF #237.</p> <p>Wolper never managed a bond fund. FOF #238.</p> <p>Wolper does not believe there is a difference between the fiduciary duty applied to</p>

broker dealers versus investment advisors as to best execution. FOF #242.

DISPUTED. Mr. Wolper has extensive regulatory experience in the securities industry as well as many years of legal experience representing and advising investment advisers. Wolper's opinion is consistent with the fact that there is no regulatory requirement to obtain multiple bids and Dr. Gibbons' admission that multiple bids are not necessary on every transaction. Wolper does not attempt to conflate an investment advisor's duty with that of a broker, he explains why the distinction drawn by the Division is not really relevant in this matter.

**17 Q Great. Could you please provide us with a
18 summary of your background and qualifications, please.**

19 A Sure. I've been practicing law for 31 years
20 now. I was in private practice for ten years in
21 Atlanta, and then I was a regulator for ten years, and
22 then I resumed practice in 2004. When I started
23 practicing law I was often and predominantly securities
24 defense related. Never exclusively, but predominantly.
25 From 1993 to 2004 I worked for NASD, which is
1 now FINRA, of course. Started out as an enforcement
2 attorney, became a director of the Atlanta district
3 office. When I left there in 2004 to return to private
4 practice, my practice has been devoted exclusively to
5 the representation of investment broker deals, and
6 investment advisers.

See Malouf Hearing Transcript 11/21/14 at 1393:17-1394:6

**16 Q During your time as a regulator with FINRA,
17 did you have occasion to deal with cases that involved
18 the same types of issues that are the subject of your
19 report?**

20 A Yes. I mean, the idea of excessive
21 compensation -- whether you're talking about markups or
22 commissions -- was not an infrequent topic to come up.

See Malouf Hearing Transcript 11/21/14 at 1395:16-22

**18 Q In your private practice, have you had
19 occasion to deal with issues similar to those that
20 you've addressed in your report?**

21 A I have. As I said, all I do is -- rightly or
22 wrongly, all I do is represent brokers and
23 broker-dealers and investment advisers. So, the issues

24 that have been presented in this case are issues with
25 which I'm already familiar as a consequence of the work
1 I do pretty much every day.

**2 Q Was there anything presented in the materials
3 that you reviewed that were unique or new to you in any
4 way?**

5 A No. I mean, just -- again, looking at the
6 scope of my report, I didn't -- there's issues in this
7 case that I haven't offered an opinion on. The things
8 that I'm talking about -- best execution and the -- you
9 know, the normality of the sale of a practice -- those
10 are the kinds of things that I deal with all the time.

See Malouf Hearing Transcript 11/21/14 at 1396:18-1397:10

**10 Q Okay. Let's talk for a minute about the
11 bases for your opinions here. I guess we ought to
12 start with best execution. And why don't we start with
13 you sort of articulating what your view or your opinion
14 is on the best execution in this particular case.**

15 A Well, investment advisers have a fiduciary
16 duty. That fiduciary duty includes, as one of its
17 components, the need to get best execution. I think
18 those are pretty obvious propositions. So, the
19 question in this case, though, is whether Dennis Malouf
20 did his, whatever his role was, to obtain best
21 execution, whether he met his or not. Which may be a
22 different question than whether UASNM met its
23 obligation to get best execution, or whether Mr.
24 Kopczynski --

25 Q "Kopczynski."

1 A "Kopczynski" -- met his obligation to ensure
2 that the firm was getting best execution, as the firm's
3 compliance officer.

4 So, with that said, yes, an investment
5 adviser has an obligation to get best execution. But
6 in my opinion in this case, is that Mr. Malouf, given
7 the role that he occupied, met whatever obligation he
8 may have had, because I think the obligation is going
9 to differ when you look at it just him versus the
10 investment adviser overall.

**11 Q Well, let's talk a little bit about that.
12 Can you tell us what your thoughts and
13 opinions are about the obligations of Mr. Malouf**

14 **individually like that?**

15 A Well, there's -- I mean, there's an
16 overarching obligation to get best execution on every
17 trade. It's just a matter of how you achieve that. And
18 the way that is achieved is not on a real-time,
19 trade-by-trade basis, at least in my opinion.

See Malouf Hearing Transcript 11/21/14 at 1402:10-1403:19

23 **Q No, that his opinion was that it should be
24 done on a trade-by-trade, real-time basis.**

25 A Right, right. I'm saying you can't. That's
1 a good theory, but, in execution, I think it doesn't
2 work.

3 **Q Why not?**

4 A Well, there's a -- one of the facets of best
5 execution is the temporal facet. When you receive an
6 order, you have to fill the order promptly. And to
7 suggest that on a trade-by-trade basis you're supposed
8 to make contact with three contra parties, or potential
9 contra parties, to get bids for prices, I think that's
10 unworkable. Because it's not like you're trading an
11 equity where the prices are all -- it's right there and
12 you can press a button -- particularly for liquid
13 securities -- and get a fill and get your order traded.
14 To suggest that you have to reach out to
15 three, or traders at other broker-dealers who may have
16 the same inventory -- and if we're dealing with, you
17 know, Treasuries, it's not exactly an illiquid
18 investment, so there are probably lots of people
19 offering these things. But to suggest you're supposed
20 to call three people every time you want to make a
21 trade, obtain those competitive quotes, and then decide
22 who's got the cheapest -- that's not even the right
23 word there, because I think best execution is not
24 strictly a quantitative analysis. So, just because you
25 get the lowest quote doesn't necessarily mean that's
1 the place at which you want to execute the trade.
2 But, anyway, the point is, it's a relatively
3 time-consuming process because most of these
4 communications are made by phone. Or, you know, back
5 in the day, traders liked to use, you know, instant
6 messaging. Sometimes -- they will communicate with

7 their companion traders in some fashion. But it's not
8 instantaneous, by any means. You've got to record,
9 somehow, the fact that you've got these three
10 competitive quotes and go ahead and make your trading
11 decision. I think that is -- it's not necessarily a
12 very quick process. And like I said, it butts up
13 against the competing obligation to get a quick and
14 timely execution.

15 And maybe -- look, there's no question that
16 for certain securities, maybe, that may be okay, but
17 we're dealing with very liquid bonds, ones that are at
18 issue in this case, when you're dealing with Treasuries
19 and the agencies here. A very deep market for these
20 bonds relative to other bonds. So, as a consequence of
21 that, highly liquid, a competitive market.

22 There is -- the idea that there's going to be
23 some broker-dealer out there that is charging way more
24 than the market and then the market's going to drive
25 business to him or away from him -- if he's not
1 competitive, he's not going to get the business.

2 So, I think, even Dr. Gibbons says that when
3 you're dealing with this market -- small spreads --
4 because of the nature of the securities that are at
5 issue in this case -- and as a consequence of their
6 smaller spreads, you've got smaller commissions here,
7 so there's less opportunity to make money on these
8 things.

9 So, taking it from the abstract to the
10 specific here, to suggest that when these particular
11 bonds -- these sort of bonds are being traded, you
12 know, for these customers, which are in smaller lots,
13 you're not talking about institutional-sized trades,
14 you're talking about retail-sized trades. Again, less
15 opportunity for price improvement when you're dealing
16 with a small trade.

17 If you're dealing with the type of security
18 that we got here, the size of the trades involved, to
19 suggest that there is a need for Mr. Malouf to have
20 achieved best execution by talking to three competing
21 broker-dealers, I disagree with.

22 **Q In your review, did you find anything -- or,**
23 **have you ever seen anything that establishes a**
24 **three-bid system as a regulatory requirement?**

25 A As a requirement? Absolutely not. There
1 isn't one. I challenge anybody to show me that as a
2 requirement.

See Malouf Hearing Transcript 11/21/14 at 1403:23 - 1407:2

13 **Q How many times have you represented
14 investment advisers in the past?**

15 A Past, ever?

16 **Q Ever.**

17 A Oh, dozens.

See Malouf Hearing Transcript 11/21/14 at 1426:13-17

10 **Now, do you understand that the obligation of
11 best execution as to a broker-dealer is different from
12 the obligation of best execution for an investment
13 adviser?**

14 A Well, not entirely. I've read the motion in
15 limine that you all filed challenging my
16 qualifications.

17 **Q I hope you liked it.**

18 A And I know that you're drawing a distinction
19 between the fiduciary obligation that attends to
20 investment advisers and the more transactional
21 obligation that attends to broker-dealers, where they
22 make a recommendation to buy/sell or exchange a
23 security under old Rule 2310, which was the one that
24 was pertinent during the time period here. But with
25 that said, I don't think it really matters.

1 I mean, I think the distinction that you drew
2 in the motion in limine is really not relevant here,
3 because the obligations of the registered
4 representative -- the broker-dealer to obtain best
5 execution are going to be the same as the investment
6 adviser, whether you call it transactional based under
7 the suitability rule, or whether you call it -- or
8 under the best execution rule, or whether you call it,
9 you know, "fulfillment of my fiduciary obligations."

10 So, I don't think this notion that there is an
11 important difference between how a broker-dealer
12 fulfills best execution versus how an investment
13 adviser fulfills best execution.

See Malouf Hearing Transcript 11/21/14 at 1459:10-1460:13

	<p>24 I take it that you would disagree that an 25 investment adviser's duty of best execution is a higher 1 duty than the duty of best execution for a broker- 2 dealer? 3 A I would agree with that. 4 Again, irrespective of the label, whether you 5 call it fiduciary obligation or the broker-dealer's 6 suitability/best execution obligation, it's going to be 7 essentially the same mechanics to fulfill those 8 obligations.</p> <p><i>See Malouf Hearing Transcript 11/21/14 at 1460:24-1461:8</i></p>
46	<p>McGinnis advised that UASNM had a best execution problem because there were excessive markups, and possibly an unregistered broker-dealer issue, and said that UASNM needed to self-report the issue, quickly.</p>
	<p>FOF #137.</p>
	<p>UNDISPUTED, although McGinnis never independently verified whether any of the conduct at issue was actually attributable to Malouf, instead relying on what Hudson and Kopczynski told him.</p> <p>11 Q Did you review the conduct of Mr. Hudson in 12 rendering your opinion in the state court litigation? 13 A No. 14 Q Did you consider whether Mr. Hudson had 15 complied with his obligations as a fiduciary, as an 16 investment adviser, and involving the securities laws 17 that are attendant to that? 18 A I don't recall, no. 19 Q So, the only thing that you were asked to do 20 is to examine conduct that you were told was engaged in 21 by Mr. Malouf; correct? 22 A That is correct. 23 Q And can we agree that you did not conduct any 24 independent investigation to verify whether the conduct 25 that was being attributed to Mr. Malouf was actually 1 conducted by Mr. Malouf? 2 A Yes, we can.</p> <p><i>See Malouf Hearing Transcript 11/18/14 at 446:11-447:2</i></p>

47	The payments from Lamonde and incentive to execute bond trades through RJ created a best execution issue in Ciambor's mind.
	FOF #153.
	UNDISPUTED

3. Malouf's Failure to Seek Best Execution Resulted in Payment of Excessive Commissions

48	Malouf directed the majority (between 60% and 95%) of the 81 bond trades identified by Dr. Gibbons.
	Malouf directed no more that 48 to 77 of the 81 trades analyzed by Dr. Gibson (60% and 95%). FOF #77.
	<p>DISPUTED. FOF 77 states only that Malouf directed <i>no more than</i> 48 to 77 of the trades analyzed by McGinnis. The estimate that Malouf directed 60% to 95% of bond trades at UASNМ related to all bond trades. Municipal bonds and corporate bonds are excluded from the trades identified and analyzed by Dr. Gibbons, and accordingly the percentage of all bond trades (including municipals and corporates) directed by Malouf cannot be applied directly to the trades analyzed by Dr. Gibbons.</p> <p>17 Q Oh, I see. Okay. But you are familiar with 18 this document in particular, this -- this report that's 19 been marked as Exhibit 29? 20 A The format is sketchy but, yes, it's 21 something equivalent they would show me in my time. 22 They may have upgraded their software in '08. 23 Q And the run period for this, I believe, is 24 2008 through 2011. So, the date is January 18, 2008. 25 In any event, if we were to look at this Page 931 1 document -- I'll just represent to you that it covers 2 trades from 2008-2011; okay? 3 A Sure. 4 Q Would you agree that in that time period a 5 lot of the trading -- and this is bond trading -- that 6 was done through Raymond James was done at your 7 direction? 8 A No. Actually, I would probably assume -- I</p>

	<p>9 think I testified to the fact that 60 to 70 percent. 10 Q Okay. So 60 to 70 percent? 11 A Possibly. But after looking at the 12 information, that may or may not be correct. It may be 13 less. 14 Q Might it be more? 15 A No.</p> <p><i>See Malouf Hearing Transcript 11/20/14 at 930:17-931:15</i></p> <p>10 Q I want to turn to some specific bond trades 11 and ask you about what you may know about Mr. Malouf's 12 involvement in these. And you're not aware of this, 13 but Mr. Malouf did file a motion in limine claiming 14 that certain documents evidence the fact that he wasn't 15 involved in all UASNMM bond trades. 16 First of all, is it your testimony that Mr. 17 Malouf was involved in every single bond trade that 18 UASNMM made? 19 A No. 20 Q But approximately 90 percent? 21 A Approximately 90 percent.</p> <p><i>See Malouf Hearing Transcript 11/17/14 at 112:10-21</i></p>
49	<p>Malouf himself believes that a commission of over one percent on a Treasury or Agency bond trade of \$1,000,000 or more is excessive.</p>
	<p>Malouf and Lamonde also both testified that they would never charge more than a hundred basis points on a bond trade, yet the evidence will show that some bond trades run through RJFS were subject to commissions in excess of one percent. Malouf's own proffered expert, DeNigris, includes multiple bond trades through RJFS that exceeded this purported one percent limit in his Tab 1, including three trades with commissions of Approximately 50 percent more than that amount. FOF #43.</p> <p>In the 2008-2011 time period, Malouf understood that Lamonde would pay at most 1 percent commission on a bond trade, or less if Raymond James' institutional grid suggested it. FOF #184.</p> <p>Malouf did not dispute his prior testimony that for a \$1 million treasury bond an appropriate commission would be one percent, would drop to 0.5 percent above that then goes down from there. FOF #186.</p>
	<p>DISPUTED. Malouf has never testified that a commission over 1% is excessive. He testified that he had an agreement with LaMonde not to charge more than 1% on any</p>

	<p>trade Malouf directed to him, and LaMonde confirmed this agreement. The Division has not offered any proof that Malouf directed any trades to RJFS that had a commission exceeding 1%, or that he was aware of any trades where the commission exceeded 1%. Malouf did not dispute that an appropriate commission on a \$1 million treasury bond would be 1%, he never testified that anything over 1% was "excessive," and he said nothing about agency bonds.</p> <p>Malouf's PFOF 44</p> <p>8 Q Okay. Is it your understanding that the 9 commission on a \$1 million federal government bond is 10 one percent and drops to half a point above that and 11 then goes down from there?</p> <p>12 A We're talking about a Treasury bond? A 13 government bond? Are we talking about Federal Home 14 Loan Banks? I'm confused because there's a very big 15 difference between a Treasury bill and FLB. There's a 16 big spread in risk there. And I know that there's no 17 risk, that the government guarantees it, but Federal 18 Home Loan Banks were under fire in 2008 to 2011.</p> <p>19 Q Well, I mean, I want to use your definitions, 20 not mine, because I'm talking about your prior 21 testimony. We're talking about a \$1 million federal 22 government bond. What does that mean to you?</p> <p>23 A Treasury note is my bet. And I would assume 24 that, yes, that would be the proper answer. I may have 25 misspoke just now.</p> <p>1 Q Okay. So, one percent for a million dollars 2 drops to a half a percent above that and then goes down 3 from there?</p> <p>4 A Right. And I might not -- without seeing the 5 issue, I don't know. So, if I said that, I would have 6 to defer to my testimony.</p> <p><i>See Malouf Hearing Transcript 11/20/14 at 972:8-973:6</i></p>
50	<p>For a treasury bond trade of over \$1 million an appropriate commission would be one-half of one percent and go down from there.</p>
	<p>Malouf did not dispute his prior testimony that for a \$1 million treasury bond an appropriate commission would be one percent, would drop to 0.5 percent above that then goes down from there. FOF #186.</p>
	<p>UNDISPUTED, but see response to PFOF 49 above.</p>

51	<p>Exhibit 553 is a July 2, 2008 e-mail from Monica Pineda to Matt Keller and Kirk Hudson reflecting one bond purchase of at least \$1,000,000 and another of \$522,825 that Mr. Malouf was involved with.</p>
	<p>From: MONICAP Sent: Wednesday, July 2, 2008 4:57 PM To: MATTK Cc: KIRK Subject: re: 7-02-08 Global Transaction Ledger</p> <hr/> <p>Kirk, The below is the two bond purchases I worked with Moe to purchase into Harley's account.</p> <p>Monica</p> <p>>> Ran this week's GTL. >> Only action item is that Kirk is confirming what activity occurred with >> Harley Ventures Inc. / Yearout on 6-25-08 and 6-26-08. Two "Money >> Transfers" occurred: The one on 6-25-08 is too large and shows only >> asterisks (so must be at least \$1,000,000+) and the one on 6-26-08 is for >> \$522,855. >> Monica: Do you mind placing this as a follow-up to ask Kirk on Monday, >> 7-07, to confirm what he found? >> Thanks, >> Matt</p> <p>Exhibit 553.</p> <p>Q [McKenna] And then can you explain why you think Mr. Malouf would be involved in this bond transaction?</p> <p>A [Hudson] Well, because knowing these accounts, you know, he bought – I know he bought these bonds. I follow this account here, I know, pretty closely. And I never, you know, bought it, done any kind of trade away with Raymond James for that account. And nobody else would because it's not their client.</p> <p>Malouf Trial Tr. 11/17/2014 at 122:12-19.</p>

DISPUTED. There is nothing in the email to suggest that Malouf was involved. The Harley account was one of Hudson's accounts, who was copied on the email, and Hudson's testimony is self-serving because he has an interest in blaming Malouf for all trades. Keller could not corroborate who serviced the Harley account between Malouf and Hudson. Malouf specifically disagreed with Hudson's testimony about who did trades for the Harley account.

23 **Q Let's take a look at 553, please. Let's look**
24 **at the top one first.**

25 **The Harley account was Kirk Hudson's account;**
1 **right?**

2 **A I believe, Kirk and Mr. Malouf's.**

3 **Q Why do you believe that?**

4 **A Because I remember, when we went over to**
5 **prospect that client, it was Mr. Malouf, Mr. Hudson and**
6 **myself.**

7 **Q Once the client was secured, who serviced the**
8 **account?**

9 **A You'd have to ask the two of them. I don't**
10 **know.**

See Malouf Hearing Transcript 11/20/14 at 1211:23-1212:10

18 **Q Do you recall Mr. Hudson's testimony from**
19 **Monday?**

20 **A The best of my ability.**

21 **Q And do you recall him testifying in**
22 **particular about a Harley trade -- a client of his**
23 **named Harley -- I believe it's the Yearouts?**

24 **A Child of the Yearouts; correct.**

25 **Q And do you recall him testifying about a**
1 **specific trade in that account -- and he did this in**
2 **the transcript at page 115 and 116, where he testified**
3 **that he knew you were involved in the trade because**
4 **nobody else at UASNM ever did a trade away from Raymond**
5 **James on the Harley account, and he had not. Do you**
6 **remember that?**

7 **A That no one else has ever done a trade away**
8 **at Raymond James or in the Harley account?**

9 **Q For his client.**

10 **A I don't recall. I mean, if he said that, I**
11 **don't agree with it.**

See Malouf Hearing Transcript 11/20/14 at 1141:18-1142:11

52 A \$5,500 commission was paid on the \$522,825 bond trade (1.052%) reflected in Exhibit 553 and the other trade was for \$1,537,829 and involved a \$15,212.90 commission (0.99%).

DATAFILE AS TRADE SLIPPER
 DATE 06/06/08 RUN TIME 04:57:22 OFFICE : 40-E MAURICE LANGHEDE, KGR
 RAYMOND JAMES & ASSOCIATES, IN
 FA BLOTTER RECORD REPORT BY ASSIGNED OFFICE
 V 30.01 PAGE 1 RUN DATE 06/07/08
 FREQUENCY: H - WEEKLY

SETT DATE	ACCOUNT NUMBER	ACCOUNT SHORT NAME	D	S	SHARES DESCRIPTION	PRICE	PRINCIPAL AMOUNT	GROSS COM.	STAND	AE	AE	GLB
06/24		UAS FIDELITY	B	500000	ALBUQUERQUE N MEX. GO GENL PUR	110.346	55000.00	5500.00		.00	.00	0219T
					ENTRY ONLY SERIES A							
					PRICE: 104.567							
					RATE/HATY: 4%							
06/25		UAS FIDELITY	B	1490000	NEN MEXICO ST REVENANCE TAX, S	103.21	1537829.00	15212.90		.00	.00	0219T
					TAX BDS BOOK ENTRY ONLY							
					YKCS.3/P100.00/0070113							
					RATE/HATY: 4%							

Exhibit 29 at RJFS-Malouf-000159.

UNDISPUTED

53 The Division's expert in this matter, Dr. Gary Gibbons, identified 81 trades in Treasury and federal agency bonds during the period in question. Dr. Gibbons excluded Corporate and municipal bond trades. The trades represented \$95,954,806 in principal amount and generated \$833,798 in commissions, which, on a dollar weighted average basis, is 87.28 basis points, or .8728 percent. Dr. Gibbons utilized his experience and other sources to opine that Treasury and agency bond trades such as these should have been subject to commissions in the range of 10 to 70 basis points.

FOF #39.

DISPUTED insofar as Gibbons range goes to 75 basis points.

Bond Characteristics						
Level	Par Value of Bond		Commission on Buys		Commission on Sells	
	Low Range	High Range	Low End	High End	Low End	High End
1	\$ -	\$ 300,000.00	50	75	45	70
2	\$ 300,001.00	\$ 600,000.00	40	60	35	50
3	\$ 600,001.00	\$ 2,000,000.00	20	45	20	40
4	\$ 2,000,001.00	\$ 5,000,000.00	10	40	10	35

See Gibbons Report Fig. 3

54 Respondent offers no expert testimony regarding a competing range of reasonable commissions on the bond trades analyzed by Dr. Gibbons.

Wolper does not offer an opinion on appropriate commission range or whether particular commissions [were] reasonable. FOF #241.

	UNDISPUTED
55	Dr. Gibbons found that UASNM clients were charged excess commissions of between \$442,106 and \$693,804 on the 81 bond trades he analyzed.
	Industry standard. Figure A5-11 in Appendix V captures this graphically. On just the 81 trades I examined in preparing this report the calculation of harm is between \$693,804 on the high side and \$442,106 on the low side. I previously noted that the total amount of commission generated by the 81 Exhibit 243, Gibbons' Expert Report at 36.
	DISPUTED that Dr. Gibbons' determination that UASNM clients were charged "excess commissions." There are no published maximum allowable commissions and all of the commissions were within the RJFS guidelines for fair and reasonable commissions. There is insufficient proof that any of the commissions charged were "excessive" and Dr. Gibbon's calculations are completely subjective. FOF 42, 80, 3785
56	Dr. Gibbons' findings regarding excessive commissions are consistent with the findings of Steven McGinnis, who recommended that UASNM self-report to the SEC based on the charging of excessive commissions.
	Q [Bliss] Did the range of markups/markdowns indicated in that Exhibit 5 result in any way in your recommendation to self-report to the SEC? A [McGinnis] Yes. Q And for what reason? A I looked at this. It looked like the clients were being charged exorbitant prices and that they needed to – and in light of what I read on the firm's ADV and no indication in any of the documentation that this – these types of charges were going to be placed against the client accounts, I felt the firm had no choice but to go to the SEC. Malouf Trial Tr. 11/18/2014 at 415:17-416:3.
	DISPUTED. See Response to PFOF 55 above. Further, Dr. Gibbons did not independently arrive at findings similar to McGinnis, he relied upon McGinnis' range and the settlement with UASNM (which was based upon McGinnis' range) when coming up with his own range. Also, Dr. Gibbons' range is not consistent with McGinnis range because it is as much as 50% higher than McGinnis' on the high end (75 basis points vs. 50 basis points).

	<p>See Response to PFOF 53 above.</p> <p>See Gibbons Expert Report at 3D) Advisors Need to Control the Price at Which They Transact Bonds In Order to Satisfy Their Fiduciary Duty</p> <p>The commission ranges shown in Figure 3 are a product of several sources of information brought together and summarized specifically for this report. Each of these data sources are cited in other portions of this report. When considered together the data sources form a mosaic that has led me to assemble the table. Each of the data sources makes an important contribution to the results found in the table:</p> <p style="text-align: center;">***</p> <p>Expert Opinion of Steven McGinnis: Though not exactly the same, this range of commissions I have identified is approximately the same as the range given by the expert Steven McGinnis (see government exhibit 44, page 20, line 4 et seq.). In his testimony he estimates the appropriate range of commissions for the bond trades Malouf made through RJFS to be in the 20 to 50 basis point range. . . .</p> <p style="text-align: center;">***</p> <p>Cease and Desist Settlement: Contained in the Cease-and-Desist Order (Administrative Proceeding File No. 3-15917) issued to UASNM, UASNM agreed to pay \$506,083 back to its clients for the excess commissions it charged on the various bond trades occurring during the period under scrutiny. I understand that for this calculation, a 40 basis point baseline was used as a proxy for a reasonable commission rate for all US Treasury and Federal Agency bond trades and amounts above that amount were deemed to be excessive.</p>
57	<p>Mr. McGinnis testified that in his 44 years in the securities industry, he has “never seen a million dollars conflict of interest like this before.”</p>
	<p>Q [Bliss] What was the basis of those recommendations? Is it the same that you talked about today?</p> <p>A [McGinnis] The same. Yes. 44 years in the industry and having worked with a lot of firms. My job through most of my career has been going into troubled firms and turning them around. You tend to see the same things over and over again. When a firm is troubled, it's because someone usually got greedy. That's what happened here. This is, you know, the beginning of the end of every firm.</p> <p>Q As far as the conflict of interest that you've talked about that Mr. Malouf's conduct created, how would you characterize that conflict of interest?</p> <p>A My opinion would be, fraud.</p> <p>Q How does it compare to other conflicts of interest you've seen throughout your career?</p>

	<p>A Of this type, the greatest one -- first off, I've heard of like major frauds, but as far as actually participating or in the review or looked at or had a firm I was hired to consult with -- would be in the five figures. Largest fraud I ever dealt with was probably in the mid eight figures, when I was with the SEC. But I've never seen a million dollars conflict of interest like this before.</p> <p>Malouf Trial Tr. 11/18/2014 at 421:24-422:22.</p>
	<p>UNDISPUTED that McGinnis said this, but the relevance of the statement without any context or explanation is unclear.</p>
58	<p>Dr. Gibbons has also opined that Malouf engaged in several repetitive short term bond trades that lost money for his clients. This non-standard industry practice is further evidence of Malouf's scheme to put his interests ahead of his clients and the conflict of interest that led him to execute bond trades through RJFS even where this may not have been in the best interests of UASNM clients.</p>
	<p>5. Much of the bond trading by Malouf was detrimental to the client. It appears that much of all Treasury and Federal Agency trades that were executed during the study period were of repetitive, short term trades with trading patterns inconsistent with normal bond ownership.</p> <p>Exhibit 243 at 4.</p>
	<p>DISPUTED. Gibbons' admitted that he could not identify any specific trades directed by Malouf and therefore it is unknown whether Malouf directed any of the "short term" trades. Because the trades cannot be attributed to Malouf, they are not evidence of any motive or scheme. Gibbons has also failed to consider or investigate whether any of the short term trades were carried out at the direction of UASNM customers or based upon a decision made by the UASNM investment committee.</p> <p>1 Q Did you undertake any effort in this report 2 to identify any specific trades to determine or confirm 3 that Mr. Malouf did a specific trade? 4 A No.</p> <p><i>See Malouf Hearing Transcript 11/18/14 at 508:1-4</i></p>
59	<p>The evidence showed many bond trades of \$1 million or more that charged commissions in excess of the 0.5 percent Malouf testified was reasonable for trades of that size.</p>
	<p>A commission of approximately 1% was paid to the Raymond James branch on the \$3 million federal agency loan reflected in Exhibit 339. FOF # 321.</p> <p>A \$5,500 commission was paid on the \$522,825 bond trade (1.052%) reflected in Exhibit</p>

553 and the other trade was for \$1,537,829 and involved a \$15,212.90 commission (0.99%). FOF # 322. (Malouf was involved with this trade, See Proposed Finding of Fact #51, above).

Trade Date	Account Number	Trade Directed by:	Transaction Type	CUSIP	Transaction Price	Net Price	Quantity	Gross Commission	Commission %
3/10/2008		?	Sell		90.588	(\$13,588.200)	(15,000)	\$137.40	1.001%
3/10/2008		?	Sell		107.739	(\$37,708.650)	(35,000)	\$381.16	1.001%
3/11/2008		?	Sell		97.644	(\$24,388.000)	(25,000)	\$248.50	1.001%
3/11/2008		?	Sell		93.416	(\$45,708.000)	(50,000)	\$472.00	1.000%
3/11/2008		?	Sell		92.070	(\$23,017.500)	(25,000)	\$232.50	1.000%
4/3/2008		?	Buy		103.549	\$2,982,199.450	2,880,000	\$28,800.00	0.975%
4/29/2008		?	Sell		108.819	(\$18,159.150)	(17,000)	\$91.25	0.500%
4/29/2008		?	Sell		100.000	(\$9,000.000)	(9,000)	\$0.00	0.000%
5/22/2008		?	Buy		100.100	\$2,002,000.000	2,000,000	\$19,862.50	1.002%
5/22/2008		?	Buy		115.128	\$1,161,280.000	1,000,000	\$11,407.20	1.001%
5/22/2008		?	Buy		104.467	\$2,089,340.800	2,000,000	\$20,680.80	1.000%
7/2/2008		?	Buy		102.317	\$787,376.000	750,000	\$7,608.00	1.001%
8/14/2008		?	Sell		100.248	(\$751,862.930)	(750,000)	\$7,594.58	1.000%
8/14/2008		?	Sell		101.310	(\$2,000,865.980)	(1,975,000)	\$20,210.77	1.000%
11/17/2008		?	Sell		98.281	(\$49,140.500)	(50,000)	\$0.00	0.000%
11/21/2008		?	Buy		93.387	\$189,774.000	200,000	\$2,500.00	1.357%
11/21/2008		?	Buy		105.420	\$1,560,216.000	1,480,000	\$14,800.00	0.958%
3/19/2009		?	Buy		101.450	\$991,673.750	1,000,000	\$10,752.50	1.086%
3/19/2009		?	Buy		112.935	\$564,675.000	500,000	\$5,000.00	0.893%
4/15/2009		?	Sell		104.289	(\$52,129.370)	(50,000)	\$125.00	0.239%
4/15/2009		?	Sell		108.413	(\$27,103.250)	(25,000)	\$62.50	0.230%
5/19/2009		?	Sell		98.500	(\$9,850.000)	(10,000)	\$50.00	0.505%
5/19/2009		?	Sell		109.358	(\$21,871.200)	(20,000)	\$109.00	0.500%
5/19/2009		?	Sell		108.358	(\$21,871.200)	(20,000)	\$109.00	0.500%
5/22/2009		?	Sell		107.450	(\$1,455,947.500)	(1,355,000)	\$13,650.00	0.922%
5/22/2009		?	Sell		105.172	(\$2,823,795.360)	(2,780,000)	\$14,692.44	0.500%
5/22/2009		?	Sell		112.653	(\$1,128,629.050)	(1,000,000)	\$5,660.95	0.500%
7/1/2009		?	Buy		106.763	\$4,270,520.000	4,000,000	\$42,281.78	1.000%
7/27/2009		?	Sell		102.224	(\$25,558.110)	(25,000)	\$258.14	1.000%
7/30/2009		?	Sell		109.713	(\$27,428.250)	(25,000)	\$277.25	1.001%
7/30/2009		?	Sell		102.699	(\$25,849.770)	(25,000)	\$259.09	1.000%
8/7/2009		?	Buy		99.267	\$1,141,570.500	1,150,000	\$16,870.50	1.500%
8/17/2009		?	Sell		99.055	(\$24,763.750)	(25,000)	\$0.00	0.000%
8/25/2009		?	Buy		110.434	\$4,417,360.000	4,000,000	\$48,000.00	1.099%
Trade Date	Trade Directed by:	Transaction Type	Transaction Price	Net Price	Quantity	Gross Commission	Commission		
8/25/2009	?	Sell	103.777	(\$4,099,181.630)	(3,950,000)	\$41,405.88	1.000%		
9/3/2009	?	Sell	110.014	(\$55,007.000)	(50,000)	\$0.50	0.001%		
10/2/2009	?	Buy	113.055	\$585,275.000	500,000	\$8,000.00	1.438%		
11/10/2009	?	Buy	110.125	\$2,202,500.000	2,000,000	\$20,000.00	1.474%		
12/4/2009	?	Buy	112.586	\$588,702.210	500,000	\$6,513.94	1.123%		
12/4/2009	?	Buy	108.015	\$928,354.510	750,000	\$9,191.63	1.000%		
12/4/2009	?	Buy	107.800	\$879,914.810	750,000	\$8,407.35	0.955%		
1/13/2010	?	Sell	109.498	(\$28,561.180)	(25,000)	\$260.84	0.905%		
1/13/2010	?	Sell	100.263	(\$25,135.690)	(25,000)	\$125.35	0.496%		
1/13/2010	?	Sell	108.025	(\$27,008.250)	(25,000)	\$125.00	0.481%		
1/20/2010	?	Sell	110.383	(\$27,695.750)	(25,000)	\$250.00	0.898%		
2/12/2010	?	Sell	107.072	(\$176,868.800)	(185,000)	\$825.00	0.465%		
3/6/2010	?	Sell	99.350	(\$1,117,687.500)	(1,125,000)	\$11,250.00	0.997%		
3/6/2010	?	Sell	108.125	(\$540,625.000)	(500,000)	\$5,000.00	0.916%		
3/11/2010	?	Buy	108.850	\$544,250.000	500,000	\$4,500.00	0.834%		
3/22/2010	?	Sell	109.050	(\$81,787.500)	(75,000)	\$582.50	0.683%		
4/16/2010	?	Sell	100.355	(\$983,366.380)	(975,000)	\$9,932.99	1.000%		
4/23/2010	?	Buy	100.735	\$780,694.460	775,000	\$7,729.65	1.000%		
5/21/2010	?	Buy	105.220	\$283,050.000	250,000	\$2,575.00	0.899%		
6/1/2010	?	Buy	104.310	\$599,780.650	575,000	\$5,937.80	1.000%		
7/2/2010	?	Buy	104.117	\$416,469.250	400,000	\$4,123.48	1.000%		
7/22/2010	?	Buy	105.649	\$1,478,086.420	1,400,000	\$14,644.42	1.000%		
7/22/2010	?	Sell	105.118	(\$13,380.710)	(11,000)	\$135.16	1.000%		
9/3/2010	?	Buy	113.826	\$341,478.690	300,000	\$3,380.94	1.000%		
9/17/2010	?	Buy	100.931	\$3,835,385.140	3,800,000	\$19,000.00	0.498%		
9/17/2010	?	Sell	115.500	(\$4,389,000.000)	(3,800,000)	\$19,000.00	0.431%		
10/22/2010	?	Sell	109.499	(\$18,424.850)	(16,000)	\$82.65	0.501%		
11/16/2010	?	Sell	114.400	(\$2,099,240.000)	(1,835,000)	\$18,350.00	0.887%		
11/16/2010	?	Buy	99.023	\$990,227.980	1,000,000	\$5,000.00	0.507%		
11/16/2010	?	Buy	99.750	\$997,500.000	1,000,000	\$5,000.00	0.504%		
12/23/2010	?	Buy	109.489	\$301,094.750	275,000	\$2,981.00	1.000%		
12/28/2010	?	Sell	108.441	(\$487,884.500)	(450,000)	\$2,452.50	0.500%		
1/7/2011	?	Buy	99.345	\$288,034.890	300,000	\$2,950.84	1.000%		
1/18/2011	?	Sell	97.912	(\$24,478.020)	(25,000)	\$247.23	1.000%		
1/26/2011	?	Buy	104.182	\$589,043.770	575,000	\$5,750.00	0.969%		

Exhibit [redacted] enigris Amen [redacted] Report, Tab 1, pages 1-2.

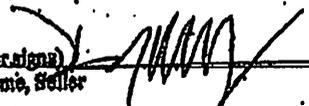
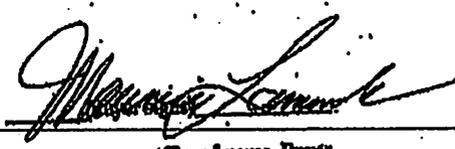
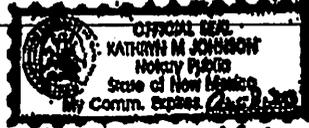
UNDIS [redacted] that commiss [redacted] 50 basis points were charged on a number of

	bond trades, but DISPUTED that Malouf testified that 0.5% was appropriate on trades of \$1 million, or that the appropriate commissions Malouf testified about related to anything other than treasury bonds. <i>See</i> Response to PFOF 49 above.
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C. Malouf acted with scienter

1. The Purported Purchase of Practice Agreement

60	<p>Malouf's claim that he and Lamonde signed a written Purchase of Practice Agreement in late December 2007 or early January 2008 is not credible.</p>
	<p><i>See</i> Proposed Findings of Fact ##61-73, below.</p> <p>Raymond James intercepted an e-mail between Lamonde as his wife, referencing financial problems and the lack of a written agreement with Malouf. As a result, Bell requested a copy of the written buy/sell agreement between Malouf and Lamonde. FOF #223.</p> <p>Lamonde told Bell that Lamonde and Malouf were working on a buy/sell agreement, but that no sale had yet taken place; Lamonde did not tell Bell that Lamonde was already making payments to Malouf. FOF #224.</p> <p>During 2009, Bell requested a copy of the buy/sell agreement on multiple occasions; the agreement was not provided, Lamonde told Bell that Lamonde was still working on the agreement, and Lamonde responded to e-mail requests for the agreement as follows: "I'M WORKING ON THE PURCHASE AGREEMENT" (on May 15, 2009) and "I AM STILL WORKING ON THE AGREEMENT AND WILL SEND IT AS SOON AS WE FINISH IT." (on June 4, 2009). Bell understood there was no sale or agreement at that time. FOF #225.</p> <p>Bell received a copy of the purported written buy/sell agreement no later than June 10, 2010. The front page was dated January 2, 2008, but the signature page and notary were dated June 11, 2010. Bell was concerned about the date discrepancy and thought it did not make sense and was inappropriate. FOF #227.</p> <p>Malouf testified that payment for the branch was to be 40% of branch revenue over a 4 year production period. FOF #166.</p> <p>The PPA stated that the production period was to be five years, from January 2, 2008 to 12-31, 2012. FOF #167.</p> <p>Malouf is not sure why if everything is based on four years, the contract contemplates five. FOF #168.</p>

	<p>DISPUTED</p> <p>The unnotarized version with an effective date of Jan. 2, 2008, was initialed on every page and signed by Dennis Malouf and Maurice LaMonde. See Ex. 57. Evidence shows only that it was notarized in 2010 and that the notarized version was provided to RJFS in 2010. Nobody has testified that they asked Malouf for a copy of the agreement prior to June 2010. Nobody has testified that Malouf refused to provide a copy of the agreement.</p>
61	<p>The Purchase of Practice agreement that was first produced in June of 2010 was notarized on June 11, 2010.</p>
	<p>24. Each of the parties hereto shall execute such documents and take such actions as may be reasonably requested by the other party to carry out the provisions and purposes of this Agreement.</p> <p>IN WITNESS WHEREOF the parties hereto hereby execute this Agreement as set forth below this</p> <p>11th day of June, 2010.</p> <p>(Seller sign)  Typed name, Seller DENNIS MALOUF</p> <p> Typed name, Buyer MAURICE LAMONDE</p> <p> Kathryn M. Johnson</p> <p>Exhibit 97 at RJFS-SEC-UASNM-000166.</p>
	<p>UNDISPUTED</p>
62	<p>The contract, bearing a June 11, 2010 notary signature, was attached to an e-mail dated the day before, June 10, 2010.</p>

	<p>Bobbie Hartzell</p> <hr/> <p>From: Eileen O'Donnell [REDACTED] Sent: Thursday, June 10, 2010 2:43 PM To: Kirk Bell - RJFS National Sales Cc: Maurice Lamonde Subject: 4GE Purchase agreement Attachments: Purchase of Practice Agreement.pdf</p> <p>Mr. Bell-</p> <p>Attached please find the purchase agreement for 4GE.</p> <p>Thank you,</p> <p>Exhibit 97 at RJFS-SEC-UASN-000160.</p>
	<p>UNDISPUTED</p>
<p>63</p>	<p>No witness other than Malouf claimed to have seen a written Purchase of Practice Agreement prior to January of 2010.</p>
	<p>Prior to 2010, Hudson, Kopczynski, and Keller had not seen a written PPA regarding Malouf's sale of his RJ branch to Lamonde. FOF #126.</p> <p>Mr. Miller [Mr. Malouf's accountant] first saw a copy of the written Purchase of Practice Agreement in May of 2011. FOF #325.</p> <p>Bell received a copy of the purported written buy/sell agreement no later than June 10, 2010. The front page was dated January 2, 2008, but the signature page and notary were dated June 11, 2010. Bell was concerned about the date discrepancy and thought it did not make sense and was inappropriate. FOF #227.</p> <p>Q [McKenna] And was it Mr. Malouf that told you he sold his Raymond James branch?</p> <p>A [Ciambor] Yes, I believe, during the 2008 on-site review.</p> <p>Q And that would have been May or June of 2008?</p> <p>A Correct.</p>

	<p>Q And did he tell you who he sold the branch to?</p> <p>A Mr. Lamonde.</p> <p>Q Did he provide you with a copy of the sales agreement?</p> <p>A No, he did not.</p> <p>Malouf Trial Tr. 11/19/2014 at 736:9-20.</p> <p>Ciambor discovered that Malouf had been receiving payments from Lamonde for the sale of his RJ branch no later than the June 2010 on site review. FOF #150.</p>
	<p>DISPUTED.</p> <p>LaMonde testified he had a written PPA in December 2007 or January 2008.</p> <p>13 BY MR. MULHERN:</p> <p>14 So, ultimately, you did enter into a</p> <p>15 written purchase of practice agreement with Mr.</p> <p>16 Malouf?</p> <p>17 A Yes.</p> <p>18 Q When did that occur?</p> <p>19 A January 2008 or December 2007, one or the</p> <p>20 other.</p> <p>21 Q So you reached a finalized, written</p> <p>22 agreement at that point in time?</p> <p>23 A Correct.</p> <p>24 Q And your signature, you believe, was on</p> <p>25 that agreement as well as Mr. Malouf?</p> <p>1 A Yes.</p> <p>2 Q And you had gotten that agreement from</p> <p>3 Raymond James?</p> <p>4 A Correct.</p> <p>5 Q And Mr. Bell?</p> <p>6 A Correct.</p> <p>7 Q So at any point in time then was your</p> <p>8 arrangement with Mr. Malouf regarding the sale of</p> <p>9 the business based on any oral understanding, as</p> <p>10 opposed to that written agreement?</p> <p>11 A Just to the extent that I could pay him</p> <p>12 faster if I needed to or wanted to.</p> <p>13 Q And that oral understanding, when did</p> <p>14 that occur?</p>

	<p>15 A The same time. 16 Q At the same time? 17 A (Nodding head.) 18 Q Yes? 19 A Yes.</p> <p>See Exhibit 308 at 70:13-71:19</p>
64	<p>Lamonde changed his testimony about entering into a written agreement with Malouf in late 2007 or early 2008 after being confronted with e-mails indicating that there was no written agreement until 2010 and acknowledged that he and Malouf did not create a written, signed agreement until June of 2010.</p>
	<p>Q Mr. Lamonde, is there anything that you wish to clarify or add anything to the statements that you have made earlier today? A Well, I'm hoping the clarifications we did at the end of the day clarified the stuff I said at the beginning of the day. Q Okay. Anything in particular that you want to make sure is clarified? A The signed document not being there until June. The verbal contract. Q So the two big changes during today were your change in testimony that you did not have a signed agreement right away, correct? A Correct. Q And the second being that you actually had an oral agreement with two components. One component being the 40 percent eventually, but initially the payments were going to be determined based on the commissions that were being earned by Raymond James through UASNM bond trading? A Correct. Q Anything else? A Not that I can think of.</p> <p>Exhibit 239 – Lamonde Tr. at 285:5-286:2.</p>
	<p>DISPUTED LaMonde changed his testimony as a result of coercive, leading questions by the division, threats of perjury, and a lack of protection from any counsel to represent him during his testimony.</p>
65	<p>Malouf has been unable to produce any copy of Exhibit A to the Purchase of Practice Agreement, which purportedly set forth the clients Malouf was transferring to Lamonde.</p>

	<p>The Purchase of Practice Agreement Provides:</p> <p>1. Seller assigns to Buyer the sole and exclusive right to provide investment advice and services; including the sale of securities and insurance products, to all of Seller's client accounts. Attached as Exhibit A is a list of such accounts, which hereinafter will be referred to as "the assigned accounts." Seller represents Exhibit A contains the names of all of his/her existing clients. Seller warrants that no</p> <p>Exhibit 97 at RJFS-SEC-UASNMM-000161.</p> <p>Q. [McKenna] Now, again, I'm going to give you my understanding, and correct me if I'm wrong, but your contention is that when you signed this agreement there was an Exhibit A to the agreement that listed the client accounts you were actually transferring to Mr. Lamonde; is that right?</p> <p>A. [Malouf] Yes.</p> <p>Q. And would you – would you acknowledge that, in connection with the SEC investigation as well as the UAS litigation, you have not been able to locate a copy of that Exhibit A?</p> <p>A. Correct.</p> <p>Malouf Trial Tr. 11/20/2014 at 921:25-922:11.</p> <p>In connection with the SEC's investigation, UASNMM looked through its files to see if it had a copy of the PPA or Exhibit A anywhere in its files and it did not find one. FOF #128.</p>
	<p>UNDISPUTED that Malouf has been unable to locate a copy, but clients were indisputably transferred from Malouf to LaMonde via a list that was in RJFS' possession. McGinnis never asked Malouf or RJFS for a copy of Exhibit A.</p> <p>FOF 69, 70 Malouf's PFOF 76, 78</p>
66	<p>Lamonde did not make payments to Malouf on a monthly basis as provided for in the Purchase of Practice Agreement.</p>
	<p>8. a. The payments to be made from Buyer to Seller referred to herein shall be made by Buyer to Seller monthly, on account of each month's commissions and securities-related fees received by Buyer. Such payments shall be received by Seller by the fifteenth (15th) day of each month.</p> <p>Exhibit 97 at RJFS-SEC-UASNMM-000162.</p> <p>In performing Malouf's personal bookkeeping, Ms. Calhoun received checks for</p>

deposit approximately twice a month from Maurice Lamonde. FOF #258.

The number of checks Malouf received from Lamonde between January 2008 and May 11, 2011 varied from between zero to four a month. FOF #323.

See also Exhibit 201.

UNDISPUTED

67 Between January 2008 and April 2011, Lamonde paid Malouf approximately 73 % of the total RJ branch revenue.

MALOUF INCOME ANALYSIS

Year	Lamonde's 1099 from RJ	Malouf's 1099 from Lamonde and Malouf's Draft Tax Returns	Malouf's % of Lamonde's Total RJ Earnings
2008	\$661,165	\$496,607	75%
2009	\$504,677	\$399,248	79%
2010	\$437,383	\$278,193 *	64%
Total	\$1,603,225	\$1,174,048	73%

Exhibit 208.

DISPUTED The \$1,174,048 in checks to Malouf represented on the Division's Ex 208 is incorrect. LaMonde paid \$1,068,084 to Malouf. See FOF 20.

DeNigris calculated that LaMonde paid Malouf 57.35% of the branch revenues and 44.59% of the gross commission earned by the branch.

See DeNigris Rebuttal Exhibit 4

5/7/11-5/20/11	\$11,595.02	\$15,086.28	
Totals	\$1,862,251.83	\$2,395,118.57	\$ 1,068,084.13

Checks paid to Malouf as a percentage of Gross Commission--> 44.59%
 Checks paid to Malouf as a percentage of Branch Retention--> 57.35%

Note:

Even using the figures from LaMonde's 1099 from RJ on the Divisions Ex. 208 (which do not include any amounts for 2011) the payments to Malouf are 66.6% of what LaMonde earned.

Also, the propriety of Ex. 208 is questionable given that the individual who prepared it, John Schmalzer, has been banned from the banking industry. Malouf's PFOF 93.

Lamonde admitted in testimony that he and Malouf did not follow the terms of the PPA and that he paid Malouf more than the terms of the PPA required.

Q The topic that I wanted to start to get into was transitioning to understand the payments that you were making to Mr. Malouf pursuant to the agreement and trying to understand those payments that were made. When did you start making payments to Mr. Malouf per the agreement or understanding that you had?

A More than likely in January of 2008.

Q And how, at that point in time, did you

decide how much to pay Mr. Malouf? How did you actually figure it out?

A It was a portion of the commissions that we got each month.

Q Portion of the overall branch commissions?

A Correct.

Q And was it supposed to be 40 percent?

A It was supposed to be 40 percent, but I paid him more, I believe.

Q And you touched on that earlier today that you had this agreement with him. I'm assuming this is oral or oral understanding that you would prepay or could prepay --

A Yes.

Q -- is that correct?

And your testimony from earlier today was that you thought you had that understanding with Mr. Malouf at the time that you reached the agreement with him, correct?

A Correct.

Q And since your testimony now is that that was an oral agreement, this would just be a portion of that oral agreement, correct?

A Correct.

	Exhibit 239 – Lamonde Tr. at 178:17-179:25.
	UNDISPUTED although the additional payments made by LaMonde were prepayments on the amount owed.
69	Lamonde also testified that Malouf repeatedly demanded immediate cash payments for the entire commission that had been earned from particular UASNM bond trades (which was contrary to the terms of the agreement that provided for monthly payments).
	<p>Q And you testified that at times Mr. Malouf expected or wanted or demanded to be paid right away, rather than waiting a week or two for his money, correct?</p> <p>A Correct.</p> <p>Q And I think you testified that he expected to be paid, you know, all or mostly all of the amount that his trades had generated, correct?</p> <p>A Correct.</p> <p>Q And that's what I wanted to follow up on, that particular point. In response to him making that demand of you, did you ever come back to him and say, no, that's not what is required under the agreement? I only have to give you 40 percent, so at most I'm going to give you 40 percent in advance.</p> <p>A No.</p> <p>Q And why not?</p> <p>A It was brought to me that this is the way we were going to do this particular trade. I mean, the buy/sell agreement. And the difference between what I was going to pay him over a long period of time would be paid over a shorter period of time.</p> <p>Q When you say it was "brought" to you, that makes it seem like Mr. Malouf initiated it.</p> <p>A Yes.</p> <p>Q He initiated it?</p> <p>A Correct.</p>
	Exhibit 239 – Lamonde Tr. at 274:22-275:15.
	DISPUTED. Although LaMonde gave this testimony it is unreliable hearsay given

under duress, without counsel, and without any cross-examination. There is no corroborating testimony from Mr. Malouf or anyone else.

70 Lamonde was forced to seek at least 13 cash advances from RJFS to pay Malouf.

Lamonde paid Malouf using payroll advances at times. FOF #214.

Payroll Advances

DATE	Branch	Dty	Region	BRANCH MANAGER	AMOUNT	For FBO if not Manager	# of Advances	Chg Amt or Error
12/17/2008	4GE	SD	5	Maurice Lamonde	\$ 18,100.00		1	\$0.00
1/20/2009	4GE	SD	5	Maurice Lamonde	\$11,800.00	Peter Lehrman	1	
1/20/2009	4GE	SD	5	Maurice Lamonde	\$1,690.00		2	\$50.00
4/16/2009	4GE	SD	5	Maurice Lamonde	\$13,600.00	Peter Lehrman	2	\$50.00
4/16/2009	4GE	SD	5	Maurice Lamonde	\$3,880.00		3	\$150.00

Exhibit 101 (note that the number of advances FBO Lamonde totals 6).

Shane Coley

From: Gerri Kavouklis Price
 Sent: Thursday, May 20, 2010 3:24 PM
 To: Shane Coley
 Subject: Payroll Advances - 4GE

11/11/2009	4GE		SD	5	Maurice Lamonde	\$19,600.00	
12/11/2009	4GE		SD	5	Maurice Lamonde	\$20,800.00	
1/14/2010	4GE		SD	5	Maurice Lamonde	\$23,260.00	
3/10/2010	4GE		SD	5	Maurice Lamonde	\$25,000.00	
4/19/2010	4GE	43Y7	SD	5	Maurice Lamonde	\$8,800.00	
4/19/2010	4GE	4G03	SD	5	Maurice Lamonde	\$2,900.00	
4/19/2010	4GE	5336	SD	5	Maurice Lamonde	\$120.00	Abi

Exhibit 102.

DISPUTED that LaMonde was “forced” to seek cash advances to pay Malouf, there was no such testimony. The evidence establishes only that LaMonde took cash advances from time to time. Two of the cash advances referenced above indicate “FBO” Peter Lehrman, indicating that they were to pay Peter Lehrman not Malouf. The cash advances also coincide with a period of financial instability for LaMonde and there is no evidence suggesting that the advances were not a result of LaMonde’s personal financial issues.

71 Malouf’s claim that Lamonde was simply pre-paying what he owed for the branch defies logic given that Lamonde was borrowing against a life insurance policy, taking

	<p>money from his father-in-law's bank account and running up new credit card debt without telling his wife. He was in no position to be voluntarily pre-paying tens of thousands of dollars to Malouf on a monthly basis.</p>
	<p>Raymond James intercepted an e-mail between Lamonde as [sic] his wife, referencing financial problems and the lack of a written agreement with Malouf. As a result, Bell requested a copy of the written buy/sell agreement between Malouf and Lamonde. FOF #223.</p> <hr/> <p>From: [REDACTED] Sent: Tuesday, April 28, 2009 10:39 AM To: Maurice Lamonde Subject: Situation</p> <p>So here goes, since you are not going to apologize or even acknowledge this situation I'll put it in writing for you.</p> <p>Not only have you not been up front about your business dealings but now you have lied to me on a personal note. I've worried constantly about your business dealings Your ego is too big to admit defeat and I'm afraid we will end up bankrupt before this is over. I knew you were taking money from Dad's account not sure for what but I knew it was going to you somehow. Now I find we have credit cards with balances that I never knew we had and in addition to that I still have never seen in writing (although promised) the agreement between you and Dennis or the state of our accounts with Raymond James. We have worked very hard for what we have and I don't feel that you value that at all anymore, your reputation and your business has now become more important than your family, appearance has become everything to you. So what to do, yes I'm thinking about somehow separating our assets so that you don't take me down with you. What I have worked for is VERY important to me and I do hope to retire some day and I don't see it happening as you keep digging us deeper and deeper.</p> <p>Exhibit 89.</p>

Q Let's start first with the e-mail from her to you at the bottom of the first page dated April 28th, 2009. I wanted to ask you questions about a number of different things which she says in here. It says, "Not only have you not been up front about your business dealings, but now you

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have lied to me on a personal note."

Do you know what that is referring to.

A Yes.

Q What is it referring to?

A That I borrowed money out of my life insurance.

Q What money did you borrow out of your life insurance?

A Approximately 9,000.

Q When did you borrow that money?

A Oh, earlier that year, I believe.

Q So the e-mail --

A Or the end of that year. The end of 2008.

Q You borrowed 9,000 out of your life insurance?

A Right.

Q Yes?

A Yes.

Q And when she says you lied to her, how did you lie to her?

A Because I borrowed the money and didn't tell her.

Exhibit 239 – Lamonde Tr. at 127:20-128:23.

DISPUTED LaMonde's efforts to prepay pre-date any indication of his financial troubles. Prior to May 2009 LaMonde was making payments to Malouf that exceeded the amount of commissions that LaMonde was earning. The email from his LaMonde's wife is sent in May 2009 and there is no indication he had any financial troubles prior to that time. After May 2009 the payments decreased significantly to levels well below the amount of commission that LaMonde was earning. See Malouf's Post-Hearing Brief Section III.C.c and Exhibit A.

72	Lamonde's payments to Malouf were tied to the commissions earned on the UASNM bond trades Malouf made through Lamonde's Raymond James branch.
	<p>Q [McKenna] Okay. You said something about a timing relationship between the bonds. What did you mean by that?</p> <p>A [Hudson] Well, it seemed like after a bond transaction, I mean pretty much, pretty clear that there were, you know, Moe giving him checks, or Dennis asking for a check from Moe, you know, within close proximity to bond transactions.</p> <p>Q So Mr. Malouf would make a bond trade through the Raymond James branch, and then subsequently, a day or two later, he would be asking for a check from Mr. Lamonde?</p> <p>A Could be a day or two, could be a week. You know, I – I think Raymond James has a payroll cycle probably like we do at our company. But very much tied to that kind of a time frame. There would be trades and requests for money, seemed to be tied together. But again, I wasn't paying real strict attention to it.</p> <p>Malouf Trial Tr. 11/17/2014 at 142:4-21.</p> <p>On at least one occasion, Malouf requested that Lamonde get an advance from Raymond James. FOF #196.</p> <p>Maurice Lamonde told Paula Calhoun that the checks Lamonde gave to Malouf were commission checks. Proposed Finding of Fact #73, below.</p>

Comparison of Commissions Earned by Lamonde from Malouf's Trades with Payments Made by Lamonde to Malouf			
	Lamonde Commissions	Payments by Lamonde to Malouf	Difference (Branch Commission - Amount Paid by Lamonde)
Total for First Quarter 2008	\$91,349.53	\$95,760.05	(4,410.52)
Total for Second Quarter 2008	\$123,649.29	\$125,065.00	(1,415.71)
Total for Third Quarter 2008	\$82,718.05	\$120,171.48	(37,453.43)
Total for Fourth Quarter 2008	\$85,062.95	\$108,100.00	(23,037.05)
Total for Year 2008	\$382,779.82	\$449,096.53	(66,316.71)
Total for First Quarter 2009	\$40,959.18	\$57,850.45	(16,891.27)
Total for Second Quarter 2009	\$34,583.93	\$48,668.32	(14,084.39)
Total for Third Quarter 2009	\$125,761.94	\$146,640.48	(20,878.54)
Total for Fourth Quarter 2009	\$150,729.84	\$113,051.00	37,678.84
Total for Year 2009	\$352,034.89	\$366,210.25	(14,175.36)
Total for First Quarter 2010	\$130,052.13	\$121,181.29	8,870.84
Total for Second Quarter 2010	\$32,962.32	\$22,607.00	10,355.32
Total for Third Quarter 2010	\$66,813.50	\$29,786.00	37,027.50
Total for Fourth Quarter 2010	\$71,598.89	\$64,168.50	7,430.39
Total for Year 2010	\$301,426.84	\$237,742.79	63,684.05
Total for First Quarter 2011	\$37,660.27	\$14,482.00	23,178.27
Total for Second Quarter 2011	\$552.56	\$552.56	0.00
Total for Year 2011	\$38,212.83	\$15,034.56	23,178.27
TOTAL	\$1,074,454.98	\$1,068,084.13	6,370.25

Sources for Trial Exhibit 203 - Payments-Commissions Comparison:

Binder 1 - Maurice Lamonde's 2008 - 2011 Wells Fargo bank statements (contained in Testimony Exhibits 104, 105, 106, & 107)

Binder 3 - Selected Raymond James Payroll Statements for 2008 - 2011 relating to Maurice Lamonde.

Trial Exhibit 201 - Payments by Lamonde to Malouf

Exhibit 203.

DISPUTED The Division has not offered evidence of any particular bond trade directed by Malouf or tied any commission paid to any trade directed by Malouf. See Malouf's PFOF 124, 125, 126. The testimony of Hudson and Calhoun is neither informed nor credible.

73

Maurice Lamonde told Paula Calhoun that the checks Lamonde gave to Malouf were commission checks.

Q [McKenna] And what was your understanding of what those checks related to?

A [Calhoun] I was told they were commissions from Raymond James.

Q Who told you that?

A Well, when I first started there, Dennis told me that his big clients were

	<p>Raymond James's clients, and then Maurice told me 'hat those were commission checks from Raymond James.</p> <p>Q And were the checks -- Well, let's just look at Exhibit 1-- for a minute, if we could, please. And I want to go to page 25 of that PDF. If you could blow up the top two checks, please. Ms. Calhoun, do these checks look familiar to you, I guess I should say?</p> <p>A Yes, they do.</p> <p>Q What do they reflect, in your opinion?</p> <p>A Commission checks Maurice Lamonde LTD would give to Dennis.</p> <p>Malouf Trial Tr. 11/21/2014 at 1243:13-1244:7.</p> <p>Q [McKenna] Did you ever have any discussions with Maurice Lamonde about these checks?</p> <p>A [Calhoun] Yes, I asked him one time what they were for.</p> <p>Q And what did he say?</p> <p>A He said that they were commission checks.</p> <p>Malouf Trial Tr. 11/21/2014 at 1244:22-1245:1.</p>
	DISPUTED See Response to PFOF 10 above.
74	Malouf's position that his arrangement with Lamonde was fully disclosed is not credible.
	See Proposed Findings of Fact ##26, 79-88.
	DISPUTED Everyone has testified that they knew about the sale of Branch 4GE and that they knew about the payments, suspected payments were occurring, or were told about the payments by Malouf. The payments were no secret. It was also no secret that UASNM was directing bond trades to RJFS from 2007 to 2011 FOF 34, 51, 59, 347, Malouf's PFOF 26, 57, 60, 83, 122, 143, 149
75	Malouf knew that his arrangement with Lamonde was a conflict of interest, and he failed to disclose that conflict to his clients at UASNM.
	Proposed Findings of Fact ##25-26.

	<p>DISPUTED Kopczynki, Hudson, and Ciambor were delegated responsibility for reviewing Forms ADV and marketing materials for accuracy and completeness. They had sufficient information, or access to such information, to ensure appropriate disclosures were made. Any failures were theirs as delegates of Malouf.</p> <p>See FOF 55, 56, 57, 58, 98, 99, 102, 108, 109, 110 COL 19, 20, 21, 22, 25, Malouf's PFOF 34, 53, 144, 158, 159, 160, 165, 166 PCOL 17</p>
76	<p>Malouf's expert witness, Alan Wolper, recognizes that SEC No-Action Letters provide guidance on the interpretation of FINRA rules and are relied upon in the securities industry.</p>
77	<p>Q [Bliss] Would you agree that SEC non-action letters provide guidance to the interpretation of FINRA rules?</p> <p>A [Wolper] Yes.</p> <p>Q And would you agree that they are relied on in the industry?</p> <p>A Sure.</p> <p>Malouf Trial Tr. 11/21/2014 at 1498:7-12.</p>
	<p>UNDISPUTED</p>
78	<p>Malouf contends, on the one hand, that his payments from Lamonde were allowable under FINRA's IM 2420-2 Continuing Commission policy, <i>i.e.</i> they were "commissions," but on the other he contends that the payments were not commissions.</p>

H. NASD Rule 2420

Relevant to the claim under § 15(a)(1) is NASD Rule 2420 and Interpretive Memorandum 2420-2. Rule 2420 addresses dealings between FINRA member firms (such as RJFS) and non-members (such as Malouf, who voluntarily relinquished his FINRA registration upon sale of the RJFS branch, effective December 31, 2007). IM 2420-2 addresses FINRA policies (applicable only to its member firms and their associated persons) regarding continuing commissions. It provides that “the payment of continuing commissions in connection with the sale of securities is not improper so long as the person receiving the commissions remains a registered representative of a member of the Association. However, payment of compensation to Rules, provided bona fide contracts call for such payment.” See Exh. I. IM 2420-2 sets forth the procedure by which FINRA member firms may pay continuing commissions to non-members.

Malouf’s Pre-Hearing Brief at 17-18.

D. Exchange Act Sections 15(a)(1) and 15C(a)(1)(A)

Malouf did not receive commissions or engage in any other conduct that would classify him as a “broker” for purposes of Section 15(a)(1) and 15C(a)(1)(A). Payments Malouf received from LaMonde were a portion of revenues earned by Branch 4GE paid as consideration for the purchase of the branch pursuant to the PPA.

Id. at 22.

DISPUTED

Malouf’s argument is that the payments to him were not “commissions” or “transaction-based” compensation. The Division has failed to prove that the payments were based upon any transactions. If the payments are somehow deemed to be “commissions” then they were permissibly paid pursuant to NARD IM 2420-2 and do not constitute “broker conduct” because they were paid for the purchase of the branch

2. Malouf kept secret his receipt of transaction based compensation

79	<p>Prior to 2010, <i>i.e.</i> for at least two years, Malouf did not tell his employees at UASNM that he was receiving payments from Lamonde based on commissions earned on trades he made through Lamonde's Raymond James branch.</p>
	<p>In 2008 Kopczynski and Hudson understood that Malouf had sold his RJFS branch to Lamonde, but they were not aware of the specific terms of that sale. Hudson learned in 2008 or 2009 that Malouf was receiving ongoing payments from Lamonde, but he assumed that such payments were being made in connection with some type of financing or prearranged installment payment schedule. FOF #34.</p> <p>Q [McKenna] Were you aware that Mr. Lamonde was paying Mr. Malouf for the branch over time?</p> <p>A [Keller] I wasn't aware of that in 2008 and 2009. But in the early part of 2010, I did become aware of it, because Mr. Malouf and I had some contentious conversations regarding it.</p> <p>Malouf Trial Tr. 11/20/2014 at 1172:19-24.</p> <p>Q [McKenna] In 2008, did you suspect that these payments that Mr. Malouf was receiving from Mr. Lamonde might have related to commissions earned through the Raymond James branch, based on Mr. Malouf's trades?</p> <p>A [Hudson] I don't know about in 2008. Between 2008 and 2011, by the time 2011 came around, I was pretty sure it was very timing oriented, relating to the bonds, and in 2008 I just knew that monies -- what I overheard, monies passing between the two.</p> <p>During that period of time, somewhere in there, I came to believe that, you know quite frankly, they had some kind of agreement, you know, related to like an earnout, you know, an earnout being where you got some share of the profit of the firm. I'd been involved in other businesses where there were sales with earnouts and I thought it seemed like an earnout to me.</p> <p>Malouf Trial Tr. 11/17/2014 at 141:12-142:3.</p> <p>Q. [King] When did you first become aware that Mr. Lamonde was actually making payments to Mr. Malouf?</p> <p>A. [Kopczynski] Perhaps in 2010, late.</p>

	<p>Malouf Trial Tr. 11/21/2014 at 1332:24-1333:1.</p> <p>Q. [McKenna] Okay. What did Mr. Malouf specifically tell you, if anything, about his association with Raymond James?</p> <p>A. [Kopczynski] That it was over with.</p> <p>Q. And when did he tell you that?</p> <p>A. When I inquired whether he actually sold the branch.</p> <p>Q. And when was that?</p> <p>A. Early 2008.</p> <p>Malouf Trial Tr. 11/21/2014 at 1376:4-12.</p> <p>Proposed Finding of Fact #80, below.</p>
	<p>DISPUTED Everyone has testified that they knew about the sale of Branch 4GE and that they knew about the payments, suspected payments were occurring, or were told about the payments by Malouf. The payments were no secret. It was also no secret that UASNM was directing bond trades to RJFS from 2007 to 2011</p> <p>FOF 34, 51, 59, 347, Malouf's PFOF 26, 57, 60, 83, 122, 143, 149</p>
80	<p>Malouf told UASNM's bookkeeper, Paula Calhoun, over and over not to tell others at UASNM about the work she was doing for him; which included depositing commission checks from Lamonde.</p>
	<p>Q. [McKenna] Did Mr. Malouf give you any direction about talking to others at UASNM about this bookkeeping that you were doing for the side companies or for him personally?</p> <p>A. [Calhoun] He told me I could never say anything to anybody at work about what I did for him, over and over.</p> <p>Q. Over and over, he told you that?</p> <p>A. Yes.</p> <p>Malouf Trial Tr. 11/21/2014 at 1240:4-12.</p>
	<p>DISPUTED</p>

	Ms. Calhoun only stated she was not to say anything about her bookkeeping work, not about depositing checks. There is no evidence Ms. Calhoun was told not to discuss the checks and she admitted they were passed freely, and openly in the office. The payments were not a secret.
81	Malouf told UASNM's bookkeeper, Paula Calhoun, that he would fire her if she told others at UASNM about the work she was doing for him; which included depositing commission checks from Lamonde.
	<p>Q [McKenna] Did he tell you what would happen if you did?</p> <p>A [Calhoun] He was the president. He would fire me.</p> <p>Malouf Trial Tr. 11/21/2014 at 1240:13-14.</p>
	<p>DISPUTED</p> <p>Ms. Calhoun did not testify that she would get fired if she told anyone about the checks from LaMonde. In any event, Calhoun's testimony was not credible.</p>
82	Malouf told UASNM's independent compliance consultant, Michael Ciambor, that with the sale of his Raymond James branch to Lamonde his relationship with Raymond James was effectively severed.
	<p>Q [McKenna] And was it Mr. Malouf that told you he sold his Raymond James branch?</p> <p>A [Ciambor] Yes, I believe, during the 2008 on-site review.</p> <p>Q And that would have been May or June of 2008?</p> <p>A Correct.</p> <p>Q And did he tell you who he sold the branch to?</p> <p>A Mr. Lamonde.</p> <p>Q Did he provide you with a copy of the sales agreement?</p> <p>A No, he did not.</p> <p>Q Did you ask for it?</p> <p>A No, I did not.</p>

Q Why not?

A Based on our conversations with Mr. Malouf, he indicated that, you know, essentially, his relationship from that point forward with Raymond James had been effectively severed. I took him at his word. I viewed that transaction as a sale of a personal asset that wouldn't necessarily come underneath any of the rules and regulations to be reported or reviewed under the Advisers Act.

Malouf Trial Tr. 11/19/2014 at 736:9-737:6.

Q [King] And at the time you first learned that the branch had been sold -- I believe your testimony was that Mr. Malouf told you that he severed ties. I think is the word that you used.

A [Ciambor] Correct.

Q Okay. Are those the words he used?

A I can't recall specifically.

Q Okay.

A But he indicated that he sold the branch office, and we confirmed that he was no longer licensed through our BrokerCheck review.

Malouf Trial Tr. 11/19/2014 at 773:18-774:3.

Q [King] Now, why is it in 2009, when you're already under the impression that he had sold the branch and had a one-time payment and had severed all ties -- why did you ask him again?

A [Ciambor] Because that's a tactic that examiners use during their reviews, where essentially they will ask the same question to multiple employees to identify inconsistencies. Given that we're on site with our clients year over year, that's also a tactic that we employ to make sure that we believe we have gotten correct information from our clients from the interviews in previous years.

Malouf Trial Tr. 11/19/2014 at 775:21-776:7.

DISPUTED

The Division cites testimony of Ciambor on cross that he does not recall Mr. Malouf saying he "severed ties."

	<p>Q [King] And at the time you first learned that the branch had been sold -- I believe your testimony was that Mr. Malouf told you that he severed ties. I think is the word that you used.</p> <p>A [Ciambor] Correct.</p> <p>Q Okay. Are those the words he used?</p> <p>A I can't recall specifically.</p> <p>Q Okay.</p> <p>A But he indicated that he sold the branch office, and we confirmed that he was no longer licensed through our BrokerCheck review.</p> <p>Malouf Trial Tr. 11/19/2014 at 773:18-774:3.</p>
83	<p>Prior to June 2010, Malouf did not tell Ciambor that he was receiving payments from Lamonde based on commissions earned on trades he made through Lamonde's Raymond James branch.</p>
	<p>Q [McKenna] Now, in 2008, when you learned that Mr. Malouf had sold his Raymond James branch to Mr. Lamonde, did you have any understanding of whether he was to receive ongoing payments from Mr. Lamonde in consideration for the sale of that branch?</p> <p>A [Ciambor] No.</p> <p>Malouf Trial Tr. 11/19/2014 at 737:20-25.</p> <p>When asked if Malouf told him when he interviewed Malouf in June of 2009, that he had received in the last year and a half over 40 payments from Lamonde totaling over half a million dollars based upon trades that had been run through Malouf's former Raymond James branch, Ciambor testified 'absolutely not,' but if that were the case he should have. FOF #156.</p>
	<p>DISPUTED Malouf told Ciambor he sold Branch 4GE to LaMonde in June 2008. Ciambor's testimony was not that Malouf did not tell him but that he did not ask. In retrospect Ciambor admits that an actual SEC examiner would have asked about the terms of the sale. Hudson, Keller, and Kopczynski all knew about or suspected payments were being made, and none of them told Ciambor either. Hudson and Kopczynski were Ciambor's primary contacts at UASNM. It is also disputed, as discussed above, that Malouf received any payments from LaMonde based upon commissions earned on trades he directed.</p>

	FOF 104, 149, 385 Malouf's PFOF 35
84	Ciambor testified that based upon what he knows now he thinks Malouf lied to him.
	<p>Q [McKenna] Based upon what you know now – I mean, bottom line, do you think Mr. Malouf lied to you about his agreement with Lamonde.</p> <p>A [Ciambor] Yes, I do.</p> <p>Malouf Trial Tr. 11/19/2014 at 852:21-25.</p>
	UNDISPUTED that this is what Ciambor testified, though it is a self-serving statement and not credible or supported by evidence.
85	UASNM did not disclose Malouf's continued involvement with the Raymond James branch in its Forms ADV or on its website.
	See Proposed Findings of Fact ##96-101, 105-106, below.
	<p>DISPUTED it was disclosed in March 2011 on the Form ADV after being specifically authorized by Malouf. Also DISPUTED to the extent no time frame has been identified. UNDISPUTED that it was not disclosed on the website.</p> <p>Regardless, Kopczynki, Hudson, and Ciambor were delegated responsibility for reviewing Forms ADV and marketing materials for accuracy and completeness. They had sufficient information, or access to such information, to ensure appropriate disclosures were made. Any failures were theirs as delegates of Malouf.</p> <p>See FOF 55, 56, 57, 58, 98, 99, 102, 108, 109, 110, 280 COL 19, 20, 21, 22, 25, Malouf's PFOF 34, 53, 144, 158, 159, 160, 165, 166 PCOL 17</p>
86	A September 17, 2010 e-mail exchange between Kirk Bell and Eva Skibicki at RJFS reflects that a 1 point commission on a \$3.8 million bond trade was reduced to half a point per a discussion between Bell and Skibicki.

	<p>Bobbie Hartzell</p> <hr/> <p>From: Kirk Bell - RJFS National Sales <[REDACTED]> Sent: Friday, September 17, 2010 2:57 PM To: Eva Skibicki Cc: Maria Shepherd Subject: RE: I need you to call me, please</p> <hr/> <p>Importance: High</p> <p>I spoke to Moe on this trade.</p> <p>Take it down to a ½ per our discussion.</p> <p>Moe also mentioned that he thought that \$3.8 went through at less than a point.</p> <p>I am jumping to a meeting.</p> <p>Exhibit 65.</p> <p>See Proposed Finding of Fact 87, below.</p>
	<p>UNDISPUTED</p>
<p>87</p>	<p>Hudson became concerned about Malouf's receipt of payments in the fall of 2010 when he learned that Malouf had questioned RJFS' decision to write down the commission charged on a particular bond trade.</p>
	<p>Q [McKenna] So you've mentioned several things that raised concerns with you about this arrangement: the fact that Mr. Malouf was asking Mr. Lamond for checks, the rent situation, your growing awareness that this was an earnout type of situation, the proximity of the request for checks to the bond trades. Anything else that caused concern, in your mind about this arrangement?</p> <p>A [Hudson] Well, I think you know, towards the end, towards the end of his employment with UAS, there was a time when you know, I had come back from a business trip and there was a pretty strong vehement disagreement amongst my other partners about an investment committee meeting where people had decided to -- well, Mr. Malouf thought they had agreed to sell 10 percent of the client portfolios out of equity and buy fixed income. And Mr. Lehrman and Mr. Keller disagreed.</p> <p>And furthermore, Mr. Malouf thought it was 10 percent out of equities regardless of whether they were in compliance with their investment policy or not. So if a client was already 10 percent below where they should have been, was going to go another 10 percent below.</p>

Mr. Keller and Mr. Lehrman thought it was a reduction of the asset allocation related to equities by 10 percent and then an evaluation client by client.

And so, it was -- that was probably one of the first times where it seemed like a fairly reckless way of approaching the investment management. The bond purchases and other things like that, I've never during the, you know, up until that point had any question about are these appropriate actions or are these good quality bonds and things like that for the account. For the most part, they were with a couple of exceptions, that I'm aware of. But -- but, that was an action that seemed designed just to create more bond purchases.

That was probably, you know, from my standpoint, you know, I talked about kind of the increasing concern about this conflict of interest. There was in September of 2010, the time when I had overheard a bond purchase had been DK'd, meaning Raymond James had stopped it from happening. It had already been purchased, already been ready for delivery, and they stopped it because they -- they, "they" are the seller, they wanted to reduce the commission.

Q. Raymond James wanted to reduce the commission?

A. Raymond James wanted to reduce -- the seller wanted to reduce the commission that was charged on a \$3 million bond trade to UAS. And that struck me as really -- I had overheard Moe and Dennis talking about it, and that struck me as very strange, that the seller was going to be reducing their profit, or their commission on our part. Seemed like that should be our job, you know.

Q. Do you know what the commission was that was paid on this \$3 million bond trade?

A. It was originally 1 percent, and was reduced to 50 basis points.

Q. Who reduced to --

A. Raymond James. I assume their corporate office or their compliance counsel.

Q. Did you overhear any reaction by Mr. Malouf to this reduction in commission?

A. I think he was just puzzled by it. I overheard a conversation with them passing. I believe I mentioned it to Ms. Villa at the time, but just -- just to confirm that it was true. And she told me yes that's true.

Q. Did you have an understanding of why Mr. Malouf would be questioning this reduction in the commission?

	<p>A. Well, it seemed strange to me. I mean, I think that that would be what's related to Moe's income, but you know, could be because the -- the bond trade didn't go through. But I thought it was a little strange to be -- you know, that whole situation for us, to be in a position where the seller is telling us that we were -- we were allowing too much to be made on a trade.</p> <p>Q Too much to be made by the seller?</p> <p>A By the seller.</p> <p>Q So in effect, what they did was they reduced the price you had to pay for the bond?</p> <p>A They reduced the price, yes, that we had been willing to pay.</p> <p>Q And who was -- who had made that bond trade; do you know?</p> <p>A Mr. Malouf.</p> <p>Trial Tr. 11/17/2014 at 145:14 – 149:5.</p>
	<p>UNDISPUTED that this is what Hudson claimed, but his testimony is not credible and he admitted to knowing about the payments in 2008. FOF 347</p>
88	<p>Hudson thought it was odd that Malouf would be concerned about a commission write down because that money was going to Lamonde.</p>
	<p><i>See Proposed Finding of Fact #87.</i></p>
	<p>UNDISPUTED that this is what Hudson claimed, but his testimony is not credible and he admitted to knowing about the payments in 2008. FOF 347</p>

3. Malouf is not a credible witness

89	<p>Malouf prior sworn statement that all bond trades were done after shopping the proposed transactions with other brokers such as Fidelity and Schwab was contradicted by his later sworn testimony.</p>
	<p>In the state litigation, Malouf signed an Affidavit that stated, in part:</p>

	<p>f. All bond trades involving Raymond James were done with full disclosure to others at UASNM and ACA Compliance Group, as evidenced by the disclosures in the Form ADV. All such trades were done after “shopping” the proposed transaction with other brokers (Fidelity and Schwab) so that, if the transaction would be done by Raymond James, it would be done in full compliance of the “best execution” rules.</p> <p>Exhibit 240 at 7, ¶ 21.f. UASNM0119355.</p> <p>See Proposed Finding of Fact #39.</p>
	<p>DISPUTED. Malouf spot checked bond markets daily. Keller’s testimony was that Malouf did obtain multiple bids on trades they did together and that Malouf taught him about getting multiple bids. Ciambor also testified that he saw evidence of multiple bids taking place. Malouf testified “spot checking” included going out to Schwab or Fidelity or another broker and getting a bid. Hudson does not know whether Malouf sought multiple bids, only that he has not seen documentation. He admitted Malouf might have sought multiple bids but not documented it.</p> <p>FOF 180, 354 Malouf’s PFOF 23, 24, 49, 61, 62, 148</p>
90	<p>Malouf’s prior sworn statement that he did not use UASNM personnel for his personal benefit other than for some minor charitable or other work was false.</p>
	<p>In the state litigation, Malouf signed an Affidavit that stated, in part:</p> <p>e. I have no knowledge any use of UASNM personnel for personal use other than some minor charitable and other work and the usual matters common to all businesses. It certainly has not been “significant” to my knowledge. Often I gave the person helping me a check from my personal funds to compensate them. This has been going on for years.</p> <p>Exhibit 240 at 7, ¶ 21.e. UASNM0119355.</p> <p>From 2008 through 2011, Ms. Calhoun spent approximately 30-40% of her time</p>

	<p>working on Malouf's personal bookkeeping. FOF #261.</p>
	<p>DISPUTED There is no evidence that the work Calhoun did for Malouf personally was "significant" and Calhoun acknowledged occasionally receiving payments from Malouf. Regardless, Calhoun's testimony is not credible and the extent of the work that she did for Malouf is uncertain and unsupported by any evidence. Also, the amount of additional compensation that Calhoun received for any work performed for Malouf was not established with any certainty. The claim that Calhoun did a significant amount of work for Malouf is belied by the fact that Calhoun testified she never complained about not receiving payment for the personal work, she completed the work during normal working hours, she never looked for another job, and she was never unhappy in her job.</p> <p>6 Q You testified about the personal work that 7 you did for Mr. Malouf personally and for some of his 8 companies; correct? 9 A That is correct.</p> <p>10 Q And you say you may have gotten some bonuses 11 for doing that work? 12 A I don't know if the bonuses were from that 13 work, but the girls in the office would receive bonuses 14 or cash from Dennis periodically.</p> <p>15 Q Okay. Did you ever complain that you weren't 16 receiving payment for that work? 17 A No, I did it during working hours.</p> <p>18 Q Did you ever ask for compensation for that 19 work? 20 A No.</p> <p>21 Q Did you ever look for another job? 22 A Did I ever look for another job? Why? 23 Q Because you weren't being compensated. Were 24 you unhappy with your job and looking for another one? 25 A No.</p> <p><i>See Malouf Hearing Transcript 11/21/14 at 1262:6-25</i></p>
<p>91</p>	<p>Malouf initially testified that he shared the written Purchase of Practice Agreement with others in 2008, but then changed his testimony to say he notified everybody verbally about the terms of the sale.</p>
	<p>Q [McKenna] And do you believe that you ever sent the Purchase of Practice Agreement to Michael Ciambor at ACA?</p> <p>A [Malouf] I believe I presented it to him, yes.</p>

	<p>Q You believe you personally presented it to Mr. Ciambor?</p> <p>A Correct.</p> <p>Q When?</p> <p>A I can't be for sure, but it would have been probably in early -- middle of 2008. The audits came in April. I'm not -- I can't be a hundred percent certain.</p> <p>Q Of the timing or of whether in fact you did present it to Mr. Ciambor?</p> <p>A The date.</p> <p>Q So, your testimony is that you gave the PPA to Mr. Ciambor in 2008 at some point?</p> <p>A Correct. I -- let me clarify that. I know that -- had an intense and a very long conversation about it, and I'm -- I -- to say that I actually handed--it--him, I can't say that. I don't recall. But I would have assumed he would have wanted to see that contract, and I would have given it to him just as I did everybody that was involved.</p> <p>Q Okay. Well, let me ask you this. Who did you give a copy of your written Purchase of Practice Agreement to in 2008?</p> <p>A I'm not sure. Possibly Kirk Hudson, or -- I know that I had it in my office, you know, for review or if anyone would ask me. I can't be sure. That's a long time ago.</p> <p>Q I understand. I understand. So you don't -- you can't be sure whether in fact you gave it to anybody in 2008?</p> <p>A I notified everybody verbally. Possibly not with an actual contract, but I can't recall.</p> <p>Malouf Trial Tr. 11/20/14 at 928:2-929:12.</p>
	<p>DISPUTED Malouf did not change his testimony, he stated that he could not recall whether he provided a copy of the PPA or he told people about it verbally. His testimony is not inconsistent.</p>
<p>92</p>	<p>Malouf's testimony at the hearing about his bond trading practices was at odds with his prior testimony.</p>

Q [McKenna] Now, would you acknowledge that, in fact, during this time period, you should have gotten multiple bids from different brokers to seek best execution on these bond trades?

A [Malouf] Yes.

Q Would you also acknowledge that you did not do that?

A No.

Q You would not acknowledge that?

A I will not acknowledge that.

Q Do you recall testifying differently when you met with Mr. Mulhern and provided investigative testimony?

A I don't recall.

MR. McKENNA: Can we pull up his transcript, which is -- what's the exhibit number, 231?

MR. BRICKELL: Yes.

MR. McKENNA: And let's go to page 124. Starting at line 8 and we're going to go to line 19: I'm going to read. This is the question. "At what point in the process would you possibly get bids from other broker-dealers?" Your answer: "I would spot check." It wasn't a situation where I got three bids' like I should have done. Okay? I read best execution, and I looked at the information. I called Raymond James about best execution. They explained how they did it. And it satisfied everything that I thought was necessary to get best execution. There was no formal format. I did check from time to time, but there was nothing religiously set up to say here are three bids. Let's take this one." Did I read that correctly?

A Yes.

MR. McKENNA: You can take that down, Tim.

Q Mr. Malouf, would you acknowledge that you did not send out bids when you wanted to buy a bond for a UAS client, nor would you send out asks when you wanted to sell a bond?

A No.

	<p>Q You would not acknowledge that?</p> <p>A I would not.</p> <p>MR. McKENNA: Can we pull up his transcript at page 127, please. And let's go to lines 14 to 19.</p> <p>Q And 'm just going to read from your transcript again. "Q. All right. But other than that process, what else did you do to spot check?" Your answer: "I mean, that's it. "I wish I could say I had the bid ask, but I just didn't. I didn't send it out for a bid or a quote, if that's where you're headed." Did I read 'hat correctly?"</p> <p>A You did.</p> <p>Malouf Trial Tr. 11/20/2014 at 935:13-937:16.</p>
	<p>DISPUTED. Malouf's testimony does not indicate that he never got multiple bids, only that he did not do that in every instance. Malouf previously testified that "There was no formal format. I did check from time to time, but there was nothing religiously set up to say here are three bids." This is consistent with testimony that he spot checked the markets. Malouf's testimony is also consistent with testimony from Keller and Ciambor regarding knowledge or evidence they had that multiple bids were being sought, but that they may not have been documented. See Response to PFOF 89</p>
93	<p>Malouf was aware that UASNM's policy was to seek multiple bids for bond trades and he falsely told others that he followed that policy.</p>
	<p>See Proposed Findings of Fact ##35, 37, 89.</p>
	<p>DISPUTED that Malouf falsely told others that he followed the policy. See Response to PFOF 38, 39, 89 above.</p>
94	<p>Malouf was at least reckless in failing to seek best execution for his bond trades.</p>
	<p>See Proposed Findings of Fact ##32 - 47.</p>
	<p>DISPUTED It has not been established that Malouf did not seek best execution on any trades, the Division has not identified any trades that Malouf directed, or shown that best execution was not achieved on any such trade.</p>

95	Malouf was aware that UASNM's Form ADVs disclosed that he had a Bachelor of Science degree from the University of Northern Colorado, when in fact he had no such degree.
	<p>At times between 2008 and May 2011, UASNM's Forms ADV and website stated that Mr. Malouf had a Bachelor of Science in Finance degree from the University of Northern Colorado at Greeley. FOF #335.</p> <p>Mr. Malouf did not receive a Bachelor of Science in Finance degree from the University of Northern Colorado. FOF #336.</p>
	<p>DISPUTED Malouf was not initially aware that the disclosure was incorrect. He became aware that he had not successfully received his degree and immediately took steps to ensure that the disclosure on the Form ADV was corrected.</p> <p>FOF 83</p>

D. Securities Act § 17(a)(1) and (3); Exchange Act Section 10b and Rule 10b-5(a) and (c): employ any device, scheme, or artifice to defraud or engage in any transaction, practice or course of business which operates as a fraud or deceit

See Section III.B. above.

E. Investment Advisers Act § 207: willfully make any untrue statement of material fact or omit to state a material fact in any registration application or report filed with the Commission

96	Various of UASNM's Forms ADV filed between 2008 and 2011 contained untrue statements of material fact and/or omitted to state material facts.
	<p>At least some of UASNM's ADVs between 2008 and 2011 did not disclose that Mr. Malouf sold his RJFS branch to Mr. Lamonde and was receiving ongoing payments from Mr. Lamonde in connection with that sale. FOF #8.</p> <p>Item 12 of UASNM's Form ADV Part II, dated April 12, 2010, disclosed that the broker recommended by UASNM was not "based upon any arrangement between the recommended broker and UASNM," and, instead, was "dependent upon a number of factors including the following: Trade execution, custodial services, trust services, recordkeeping and research, and/or ability to access a wide variety of securities. UASNM reviews, on a periodic and systematic basis, its third-party relationships to ensure it is fulfilling its fiduciary duty to seek best execution on client transactions." FOF #9.</p>

	<p>Item 12 of UASNM's Form ADV, Part II, dated April 12, 2010, affirmatively represented that "employees of UASNM are not registered" representatives of Schwab, Raymond James or Fidelity, and do not receive any commissions or fees from recommending these services." FOF #10.</p> <p>Items 8 and 9 of the UASNM Forms ADV Part II, dated February 4, 2008, August 20, 2008, and December 1, 2008, disclosed that employees of UASNM were or may be registered representatives of RJFS and could receive commissions. FOF #29</p> <p>Items 8 and 9 of UASNM's Forms ADV Part II, dated October 1, 2009, January 1, 2010, and April 12, 2010 removed the prior disclosure regarding the UASNM employee's status as a registered representative of RJFS but were otherwise the same as the prior versions. FOF #30.</p> <p>Items 10 and 12 of UASNM's Form ADV Part 2A, dated March 2011 disclosed that Malouf had sold his interest in a RJFS branch in exchange for a series of payments, and that an incentive may exist for UASNM to utilize RJFS to generate revenue that may be utilized to make payments to Malouf. FOF #31.</p> <p>Ciambor believes that disclosure of the financial incentive for UAS to route trades through RJ, that was ultimately made in March 2011, should have been disclosed in all form ADVs ever since Malouf's arrangement with Lamonde in 2008. FOF #154.</p> <p>See Exhibit 193.</p>
	<p>DISPUTED</p> <p>No evidence was provided to indicate which Forms ADV were drafts versus final versions, whether any were filed with the SEC, or whether any were disseminated to customers.</p> <p>Malouf's PFOF 152</p>
97	<p>The disclosure in items 8 and 9 of UASNM Forms ADV Part II, dated February 4, 2008, August 20, 2008, and December 1, 2008, that employee(s) of UASNM were or may be registered representatives of RJFS and could receive commissions did not relate to Malouf because Malouf was no longer a registered representative of RJFS.</p>
	<p>As a result, at the end of 2007, Malouf terminated his registration with broker-dealer and he transferred his broker-dealer customers either to UASNM or to the new branch manager. Branch manager continued to operate the broker-dealer office within UASNM's office space until June 2011. FOF #5.</p>
	<p>UNDISPUTED that the disclosure did not relate specifically to Malouf, though it did</p>

	<p>constructively put UASNM customers on notice of a relationship between UASNM employees and RJFS.</p>
<p>98</p>	<p>Malouf, as CEO, president, and majority shareholder of UASNM had final and ultimate responsibility for UASNM's Forms ADV between 2006 and the end of 2010.</p>
	<p>When Malouf was CEO of UASNM he was "top dog" and Mr. Kopczynski and Mr. Hudson worked for him. FOF #197.</p> <p>Malouf, Kopczynski, Hudson and outside compliance consultant ACA each were involved to varying degrees in preparing or reviewing UASNM's Forms ADV from 2008 through May 2011. FOF #32.</p> <p>Malouf performed at least a cursory review of some form ADVs focusing on disclosures relating to himself and RJFS. FOF #33.</p> <p>Q [McKenna] Okay. You didn't really my answer [my question], though. My question is, do you acknowledge that between 2006 and the end of 2007 you had final and ultimate responsibility for UASNM's ADVs?</p> <p>A [Malouf] No.</p> <p>Q Can we show the investigative testimony at page 342, lines 3 to 15.</p> <p>The question you were asked was, "In your view between 2006 and the end of 2010, who had final and ultimate responsibility for the ADV and its contents for UASNM?" Your response: "The buck stops with me, there's no doubt, as the president and CEO and the majority shareholder. I gave Joe the final approval on that document every time. I mean, it would just be a given. I mean, I trusted him. I think he disclosed and did everything that he was supposed to do until, once again, when I took over and started looking at the ADV Part 2 brochure, the things that weren't disclosed, the things that should have been disclosed, and I did the best I could." Did I read that properly?</p> <p>A Yes.</p> <p>Malouf Trial Tr. 11/20/2014 at 993:12-994:9.</p> <p>Q [McKenna] So, you disagree that you had the ultimate responsibility that they were accurate?</p> <p>A [Malouf] I guess I'm partially responsible, for sure, as a CEO, but, I mean –</p>

Malouf Trial Tr. 11/20/2014 at 994:25-995:3.

DISPUTED Kopczynski and Hudson were delegated and accepted responsibility for UASNM Forms ADV, such delegation was permissible. The UASNM compliance manual assigned the responsibility for ensuring the accuracy of the Form ADV to the CCO, Kopczynski. Hg. Exh. 346, p. 51 (ACA000432-00335).

Kopczynski accepted the delegation of the duty to review and approve the Forms ADV, understood that it was his responsibility, and that he actually reviewed the Forms ADV for accuracy:

Okay. Lets take a look at the compliance

24 manual again. That's Exhibit 346. And we're going to
25 be at page 50.

Page 1324

1 And again this is the August 2008 compliance

2 manual. Page 50 is titled "Disclosure Requirements."

3 Right?

4 A Correct.

5 Q Subparagraph A is Form ADV. If you look down

6 below there's two bullet points. It talks about the

7 SEC not accepting filings with Part II of Form ADV,

8 instead UASNM must keep a copy in its files and provide

9 it to the SEC staff upon request; right?

10 A Yes.

11 Q And then it says, "UASNM is still required to

12 amend Part II if answers become materially inaccurate."

13 Right?

14 A Yes.

15 Q And you understood that to be the case

16 throughout this time period; right?

17 A I did.

18 Q And did you have an understanding of the

19 timeliness of those amendments once the firm becomes

20 aware that it has become materially inaccurate?

21 For example, would it be a week, would it be

22 a month, would it be a quarter, would it be a year?

23 A For material change?

24 Q For material change.

25 A It's my understanding it should be as quickly

Page 1325

1 as is possible.

2 Q Okay. So, not waiting six months or nine

3 months?

4 A Right.

5 Q Let's turn to page 51.

6 And in that second paragraph, I just wanted

7 to confirm that the policy does in fact say, "The CCO

8 is responsible for ensuring the Parts 1A and Part II of

9 UASNM's Form ADV are properly maintained and

	<p>10 disseminated. Accordingly, the CCO will periodically 11 review the ADV to ensure that it is accurate and 12 complete." 13 Now, did you do that? 14 A That was done twice a year, for sure. 15 Q And you were involved in that process? 16 A Yes. 17 Q And you personally reviewed the Form ADV; 18 right? 19 A Along with ACA, yes. 20 Q Not asking about ACA. I'm asking about Mr. 21 Kopczynski. 22 A I did. 23 Q And the purpose of your review was to ensure 24 that it was accurate and complete; right? 25 A That is correct.</p> <p>Kopczynski Trial Tr. pp. 1323: 23-1325:25.</p> <p>See also, FOF 55, 102, 108, 109, 110, 367, 369, COL 20, 21, 22, 25 Malouf's PCOL 79</p>
99	<p>Malouf had a responsibility to make full and accurate disclosure in the Forms ADV regarding his ongoing relationship with Raymond James.</p>
	<p>Q [McKenna] Okay. Would you agree with me that with regard to ADV disclosures that related to you personally, you had an even greater responsibility?</p> <p>A [Malouf] Yes.</p> <p>Q And you did understand that you had a responsibility to make full and accurate disclosure in the ADVs regarding your ongoing relationship with Raymond James?</p> <p>A I did.</p> <p>Malouf Trial Tr. 11/20/2014 at 995:4-12.</p>
	<p>DISPUTED Malouf had a responsibility to make disclosures on Forms ADV to the extent he was aware they needed to be made or were not already made on Forms ADV. There is no evidence Hudson, Kopczynski, or Ciambor advised Malouf or brought it to his attention that any additional disclosures regard Branch 4GE or RJFS were necessary, despite the fact that they had the necessary information to provide such advice. See also opposition to PFOF #98.</p>

100	All or most of the Form ADVs created between October 1, 2009 and April 12, 2010, portions of which are reflected in Exhibit 193, were provided to UASNM clients.
	<p>Q [McKenna] Okay. And I'll just represent that it was only required to be filed with the commission starting in January of 2011.</p> <p>So, fair to say, then, that one of these form ADVs, if not all or most of them, starting with the October 1, 2009, until the April 12, 2010 form, would have been provided to UASNM customers?</p> <p>MR. KING: Objection. Leading.</p> <p>MR. McKENNA: That's fair.</p> <p>JUDGE PATIL: Cross-examination, so --</p> <p>Q You can answer my question.</p> <p>JUDGE PATIL: -- overruled.</p> <p>A [Kopczynski] I believe it would have been fair that they would have received those, yes.</p> <p>Malouf Trial Tr. 11/21/2014 at 1377:13-1378:1.</p> <p>Q [Jamieson] Okay. The second sentence in there, starts on the second line, says, "Client acknowledges that adviser has delivered, and client has acknowledged receipt and thoroughly read information providing disclosures in the form of ADV" -- "in the form of Form ADV Part II regarding the background of adviser's business practices and fee schedules." Do you see that?</p> <p>A [Owens] Mm-hmm.</p> <p>Q And by signing this document on the last page, you acknowledge that you had received and thoroughly read the information on that form; correct?</p> <p>A I probably didn't read it word for word, but I looked over it.</p> <p>Malouf Trial Tr. 11/20/2014 at 906:7-20.</p>
	<p>DISPUTED</p> <p>Kopczynski's testimony is not evidence that the Forms ADV from October 1, 2009 to April 12, 2010 were provided to UASNM clients. Kopczynski just agreed with the leading question of counsel for the Division that ADV might have been delivered. But no foundation was laid that Kopczynski had personal knowledge, or would have ever been apprised of whether or not a UASNM customer would have been provided Forms</p>

	<p>ADV. There is no evidence that any particular Form ADV was provided to any UASNM customer.</p> <p>Ms. Owens' testimony relates to the February 2008 Form ADV, which disclosed Malouf's ownership of Branch 4GE, and the potential conflict of interest disclosed therein. There is no evidence she reviewed any ADV that omitted this information.</p>				
101	<p>Form ADV Part II is an application under Section 207 of the Investment Advisor's Act.</p>				
	<table border="1"> <tr> <td> <p>Schedule F of Form ADV</p> <p>Continuation Sheet for Form ADV Part II</p> </td> <td> <p>Applicant: UASNM, Inc. d/b/a Universal Advisory Services</p> </td> <td> <p>SEC File Number: 801-30458</p> </td> <td> <p>Date: February 4, 2008</p> </td> </tr> </table> <p>See, e.g., Exhibit 24 at MaloufSEC 000542: "Applicant: UASNM, Inc. d/b/a Universal Advisory Services"</p>	<p>Schedule F of Form ADV</p> <p>Continuation Sheet for Form ADV Part II</p>	<p>Applicant: UASNM, Inc. d/b/a Universal Advisory Services</p>	<p>SEC File Number: 801-30458</p>	<p>Date: February 4, 2008</p>
<p>Schedule F of Form ADV</p> <p>Continuation Sheet for Form ADV Part II</p>	<p>Applicant: UASNM, Inc. d/b/a Universal Advisory Services</p>	<p>SEC File Number: 801-30458</p>	<p>Date: February 4, 2008</p>		
	<p>UNDISPUTED</p>				

F. Aiding or abetting UASNM's violations of Sections 206(1), (2), and 207: UASNM made false statements in Forms ADV and on its website; Malouf knowingly or recklessly provided substantial assistance

102	<p>Malouf substantially assisted in the preparation of UASNM Forms ADV.</p>
	<p>See Proposed Findings of Fact ##98-99.</p>
	<p>DISPUTED Kopczynski and Hudson were delegated and accepted primary responsibility for UASNM Forms ADV, such delegation was permissible. FOF 55, 102, 108, 109, 110, 367, 369; COL 20, 21, 22, 25 Malouf's PCOL 79. See also, opposition to PFOF ## 98-99.</p>
103	<p>As UASNM's CEO and majority shareholder, Malouf had control over UASNM's Forms ADV.</p>
	<p>See Proposed Findings of Fact ##98-99.</p>
	<p>DISPUTED Kopczynski and Hudson were delegated and accepted primary responsibility for UASNM Forms ADV, such delegation was permissible.</p>

	FOF 55, 102, 108, 109, 110, 367, 369, COL 20, 21, 22, 25 Malouf's PCOL 79. See also, opposition to PFOF ## 98-99.
104	Malouf was at least extremely reckless in not disclosing his arrangement with Lamonde such that it could be disclosed in UASNM's Forms ADV.
	See Proposed Findings of Fact ##96-99.
	DISPUTED Kopczynski and Hudson were delegated and accepted primary responsibility for UASNM Forms ADV, such delegation was permissible. Malouf reasonably relied upon Kopczynski and Ciambor to ensure Form ADV disclosures were adequate and accurate. FOF 55, 102, 108, 109, 110, 367, 369, COL 20, 21, 22, 25 Malouf's PCOL 79. See also, opposition to PFOF ## 98-99.

G. Aiding and abetting and causing Section 206(4) violation: UASNM made false website statements about independence, commissions, conflicts of interest, and best execution; Malouf knowingly or recklessly provided substantial assistance

105	UASNM's website contained false statements about UASNM's independence, lack of compensation by commission, conflicts of interest, and best execution.
	At times, between 2008 and 2011, UASNM's website made the following statements: "Uncompromised objectivity through independence, UASNM is not owned by any product, company nor compensated by any commissions. This allows us to provide investment advice devoid of conflicts of interest. UASNM may place trades through multiple sources ensuring that the best cost/service/execution mix is met for its clients." "We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients' portfolios." FOF #12. Exs. 66, 68, and 69 contain UASNM's website address and the language found on those exhibits that "We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity" and "UAS is not owned by any product company nor compensated by any commissions. This allows us to provide investment advice void of conflicts of interest" were very common statements UASNM would use in marketing. FOF #131.

	<p>ACA advised UASNM in the September 2007 Annual Report that the language in its marketing materials "void of conflicts of interest" could be misleading, and recommended removing it. FOF #85.</p> <p>ACA advised UASNM in the December 2009 Annual Report that the language on its website "void of conflicts of interest" could be misleading, and recommended removing it. FOF #86.</p> <p>The "void of conflicts of interest" language continued to appear on the UASNM website and in marketing materials in 2008-2010. FOF #87.</p>
	<p>UNDISPUTED that the statements were made on the website, but the problems arose initially from Hudson and Kopczynski's own conflicts of interest, which they were informed of by ACA on two separate occasions and they took no remedial action. There is also no evidence they notified Malouf of any problem or that any remedial action was necessary. The statements continued to be a problem after Malouf was terminated from UASNM, and they were only removed in response to an exam by the SEC in 2012. The responsibility for the website was assigned to Kopczynski as CCO by UASNM's compliance manual, he acknowledged he was responsible for representations on the website, and he actually reviewed the website. Hg. Exh. 346, p. 72 (ACA000432-0008356); Kopczynski Trial Tr. pp. 1354-1357. Malouf delegated all compliance functions to Kopczynski as CCO, including the website content, consistent with UASNM's written compliance procedures, and reasonably relied on Kopczynski to ensure the information was compliant. "My responsibility as chief compliance officer was to take procedures and protocols that were established in an effort to keep UASNM in compliance with the Commission's regulations, and effectively work with the consultant to make sure anything that was required along those lines would be taken care of." (Kopczynski, Trial Tr. p. 1287)</p>
106	<p>Malouf knowingly and recklessly provided substantial assistance regarding the false website statements.</p>
	<p>Malouf was the lead salesman for UASNM, and he was familiar with at least some of the contents of its website. FOF #13.</p> <p>While Malouf testified that he may not have read every work of UASNM's website, he was familiar with its contents in the 2008, 2009, and 2010 time frame. FOF #189.</p> <p>Malouf's understanding was that what's on the UASNM website for the public to consume is what's important. FOF #190.</p> <p>Mr. Malouf previously testified that he "probably read" statements on UASNM's website in 2008 about UASNM being independent and not charging commissions. FOF #191.</p>

	<p>Q [McKenna] Did UASNM maintain a website during this period, 2008 to 2011?</p> <p>A [Hudson] We did.</p> <p>Q And did Mr. Malouf have any involvement in that website?</p> <p>A He did.</p> <p>Q What was his involvement in that?</p> <p>A Well, he -- in different generations of it, different versions of it, there was a version that he and Mr. Womack really created together. There was another version that he had hired the daughter of a client to develop. And so, for at least part of that period, the website was something that he took the lead on developing.</p> <p>Malouf Trial Tr. 11/17/2014 at 157:3-16.</p> <p>Q. [King] All right. Let's talk for a minute about marketing materials and the website. Who was responsible for the content of the website?</p> <p>A [Malouf] In its genesis, the gathering of information came from Scott Womack. He ran it through me, I ran it through Joe. We had the office in California, and it was put up on the website.</p> <p>A few years later it was taken down and revamped by Twin Studios (sic), and I think that's when we took off all the family office -- the professional football player stuff we were looking at in Beverly Hills. There were two of those, but I was part of the creative part of that.</p> <p>Malouf Trial Tr. 11/20/2014 at 1137:25-1138:12.</p>
	<p>DISPUTED The problems with the website arose from Hudson and Kopczynski's own conflicts of interest, which they were informed of by ACA on two separate occasions and they took no remedial action. There is also no evidence they notified Malouf of any problem or that any remedial action was necessary. The statements continued to be a problem after Malouf was terminated from UASNM, and they were only removed in response to an exam by the SEC in 2012. The responsibility for the website was assigned to Kopczynski as CCO by UASNM's compliance manual, and he acknowledged he was responsible for representations on the website. Malouf delegated all compliance functions to Kopczynski as CCO, including the website content, consistent with UASNM's written compliance procedures. It is undisputed that Hudson and Kopczynski were never accused by the SEC of having aided and</p>

	<p>abetted UASNM's violation; Malouf was less culpable than Hudson and Kopczynski, and should not be charged with aiding and abetting.</p> <p>See Opposition to PFOF #105.</p>
107	<p>As a participant in the agreement with Lamonde to receive payments related to bond trades made through Raymond James, Malouf had a duty to disclose the material aspects of that agreement.</p>
	<p>See Proposed Findings of Fact ##23-31.</p>
	<p>DISPUTED</p> <p>This is not a finding of fact. Rather, the proposed finding as phrased is a conclusion of law (i.e., whether a duty existed and who owed the duty). In any event, Hudson knew about the sale of Branch 4GE and knew that LaMonde was making payments to Malouf at the same time Malouf was directing bond trades to RJFS. As the individual signing and attesting to the accuracy of the Forms ADV it was Hudson's duty to ensure the Form ADV accurately disclosed the potential conflict of interest of which he was fully aware.</p> <p>Kopczynski was responsible for Forms ADV under the UASNM compliance manual.</p> <p>See opposition to PFOF #23-31, 98, 99.</p>
108	<p>Malouf failed to disclose material aspects of his agreement with Lamonde to UASNM's Chief Compliance Officer, Joe Kopczynski, and its Chief Operating Officer, Matt Keller.</p>
	<p>See Proposed Finding of Fact #79.</p>
	<p>DISPUTED See opposition to PFOF #79. Additionally, Kopczynski admitted he believed the sale of Branch 4GE would have involved payments over time from LaMonde to Malouf, similar to the terms of his sale of UAS to Malouf and Hudson in 2004. (Kopczynski, Trial Tr. pp. 1331-1332). Additionally, the payments to LaMonde were broadcast openly throughout the office on those occasions when Malouf would ask LaMonde about the status of payments, resulting in at least one or two open arguments about the payments. According to Hudson:</p> <p>... But certainly, you</p> <p>12 know, it's common for practices to be sold with</p> <p>13 seller financing, so maybe in a brokerage firm as</p> <p>14 well. And since Dennis had said capital gains,</p> <p>15 either Moe had came up with money or he borrowed</p> <p>16 money.</p> <p>17 Q And you, during these times when Mr. Malouf</p> <p>18 would say where is my check or talk about his check,</p> <p>19 did you ever discuss the amounts or hear anything</p>

	<p>20 about the amounts at all that the checks were for?</p> <p>21 A It's possible I may have heard it. I</p> <p>22 don't -- wasn't -- if I did, it wasn't regular,</p> <p>23 wasn't me asking about them. It's possible Dennis</p> <p>24 might have said an amount sometime. I really don't</p> <p>25 know. I don't remember hearing anything like that.</p> <p>Q Do you ever remember forming an opinion or</p> <p>2 view in your head whether the amounts were</p> <p>3 substantial, more than 5,000, 10,000 or 15,000, on a</p> <p>4 regular basis?</p> <p>5 A I don't know about on a regular basis. I</p> <p>6 know they got in an argument a few times about it,</p> <p>7 pretty heated, so I guess I would assume it was</p> <p>8 substantial probably.</p> <p>Hg. Exh. 229, Hudson Inv. Tr. pp. 104-105.</p> <p>The fact that LaMonde was making payments to Malouf, according to Hudson, "wasn't a hidden thing," and Hudson assumed they payments for the purchase of Branch 4GE:</p> <p>. . . But in terms of talking to him about his</p> <p>24 own business, what are you doing with Moe on -- how</p> <p>25 is he paying you? I didn't really have those</p> <p>discussions, although, I knew that Moe was giving him</p> <p>2 checks and it was pretty -- wasn't a hidden thing.</p> <p>3 Q Did he ever confirm with you that the</p> <p>4 checks were for the sale of the business?</p> <p>5 A I don't think he ever said, you know, these</p> <p>6 checks are, you know, for the sale of the business,</p> <p>7 but they were -- I probably assumed that.</p> <p>Exh. 229, Hudson Inv. Tr. pp. 106-107</p>
109	<p>Malouf caused false statements about UASNM's independence and receipt of commissions, and about his receipt of a Bachelor of Science degree to appear on UASNM's Forms ADV and its website.</p>
	<p><i>See FOF##335-336; Proposed Findings of Fact ##102-108.</i></p>
	<p>DISPUTED See opposition to PFOF ## 102-108, in particular ##105 and 108.</p>
110	<p>As UASNM's CEO and majority shareholder, Malouf had control over</p>

	UASNM's website.
	See Proposed Findings of Fact #106.
	DISPUTED See opposition to PFOF ##105-106.
111	Malouf was at least extremely reckless in not disclosing his arrangement with Lamonde such that it could be disclosed in UASNM's Forms ADV.
	See Proposed Findings of Fact ##102-110.
	<p>DISPUTED</p> <p>This is not a finding of fact. Rather it poses the question of whether Malouf's alleged conduct was "extremely reckless" and is thus a proposed conclusion of law. In any event, Malouf delegated duties regarding the Forms ADV to Kopczynski, who had extensive experience as a CCO, and Hudson, the CFO. Both had knowledge or access to knowledge regarding the sale of Branch 4GE and the payments to LaMonde.</p> <p>See opposition to PFOF ## 102-110.</p>

H. Miscellaneous

112	Item 12.B of Form ADV Part II (and Item 12.A of the new Part 2A) requires an investment adviser to disclose the factors considered in selecting brokers and determining the reasonableness of their commissions.
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	<p>Item 12.B</p> <p>Clients wishing to implement UAS's advice are free to select any broker and/or dealer that they wish and are so informed. Those Clients who wish UAS to recommend a broker will receive a recommendation based on the broker's cost, skill, reputation, dependability, and compatibility with Clients, and not upon any arrangement between the recommended broker and UAS.</p> <p>UAS utilizes Charles Schwab & Co., Inc. ("Schwab") and NATC for a significant portion of Client brokerage transactions. Fidelity Registered Investment Advisory Group ("Fidelity") may serve as a sub-custodian for client accounts serviced through NATC. UAS may also utilize the services of other service providers that best meet Client needs. The entity that is recommended by UAS is dependent upon a number of factors, including the following: trade execution, custodial services, trust services, record keeping, and research, and/or ability to access a wide variety of securities. UAS reviews on a periodic and systematic basis its third-party relationships to ensure that it is fulfilling its fiduciary duty to seek best execution on Client transactions.</p> <p>For Investment Management services UAS recommends, and Clients may choose, to place trades through a discount broker or trust company. UAS may recommend the services of Schwab, Fidelity, a similar discount broker, or NATC. The selection is made on the basis of rates, execution services available to the Client, and other relevant factors. Clients may pay transaction fees to the above brokers or trust company for the purchase of some "rid-lead" funds.</p> <p>Ex. 24 at UASNM0442.</p>
	<p>UNDISPUTED, but note that Item 12.A requires this, not 12.B.</p>
<p>113</p>	<p>Malouf's conduct was repetitive and long-lasting. Over three plus years, Malouf received 74 payments from Lamonde based upon UASNM trades executed through the Raymond James branch he sold to Lamonde, totaling \$1,068,084.13.</p>
	<p>See Proposed Finding of Fact #16.</p>

PAYMENTS MADE BY LAMONOR TO MALLOFF

Date	Check	Account	Metro	Monthly, Quarterly, & Annual	Fields
1/25/03	1121	515,000.00	*****		515,000.00
2/14/03	1126	526,053.76	*****		526,053.76
3/24/03	1137	554,415.28	****		554,415.28
Total for First Quarter 2003					
4/12/03	1140	572,750.00	*****		572,750.00
4/13/03	1141	572,850.00	*****		572,850.00
4/23/03	1142	535,000.00	MILL (Lemon)		
4/25/03	1145	500,000.00	LEANTIS EM		500,000.00
5/25/03	1149	535,000.00	*****		535,000.00
5/27/03	1145	57,300.00	*****		57,300.00
6/17/03	1149	513,954.00	1st 3/12 (June)		513,954.00
Total for Second Quarter 2003					
7/25/03	1152	525,000.00	*****		525,000.00
7/14/03	1157	56,000.00	*****		56,000.00
7/21/03	1250	513,000.00	*****		513,000.00
8/14/03	1258	55,107.00	*****		55,107.00
9/14/03	1259	55,750.00	*****		55,750.00
9/22/03	1241	59,750.00	*****		59,750.00
9/25/03	1154	511,404.00	AVG		511,404.00
Total for Third Quarter 2003					
9/17/03	1158	55,500.00	*****		55,500.00
9/25/03	1161	58,054.48	*****		58,054.48
Total for Third Quarter 2003					
10/22/02	1165	526,500.00	Oct 03		526,500.00
10/23/02	1166	500,000.00	Oct 03		500,000.00
11/13/02	1168	510,000.00	*****		510,000.00
12/14/02	1170	524,000.00	Dec 31/2 MON		524,000.00
12/16/02	1175	522,500.00	1/2 Dec		522,500.00
12/18/02	1176	518,000.00	1/2 Dec		518,000.00
12/24/02	1176	55,500.00	*****		55,500.00
Total for Fourth Quarter 2002					
Total for Year 2002					
1/25/03	1180	513,200.00	*****		513,200.00
1/29/03	1241	52,000.00	*****		52,000.00
2/11/03	1243	57,501.55	*****		57,501.55
3/25/03	1276	513,954.00	1st 3/12 March		513,954.00
5/14/03	1246	52,100.00	1st 3/12 March		52,100.00
5/29/03	1244	512,000.00	2nd 3/12 MARCH		512,000.00
Total for First Quarter 2003					
4/21/03	1241	510,000.00	REPLACEMENT CHECK		510,000.00
4/27/03	1242	57,200.00	BA. # 2 of 3/12 M/03		57,200.00
5/29/03	1246	51,012.37	2nd 3/12 MAY		51,012.37
Total for Second Quarter 2003					
6/29	1270	518,000.00			518,000.00
7/29	1329	55,500.00	BA. 3rd 3/12 JUNE		55,500.00
7/29/03	1336	54,000.00	2nd 3/12 3/12 of 63479332 (June)		54,000.00
8/14/03	1332	56,400.00	1st 3/12 AUG		56,400.00
8/22/03	1332	510,000.00	PAYROLL (June) 1/2 of Sept		510,000.00

Month's Total
 201
 PAYMENTS

Maurice Lamonde's Payments to Dennis Malouf				Monthly, Quarterly, & Annual
Date	Check	Amount	Memo	Totals
9/15/09	1324	\$41,912.00	misc*	
9/23/09	1334	\$4,456.00	2nd 1/2 Dec	\$46,368.00
Total for Third Quarter 2009				\$46,840.48
10/19/09	1053	\$5,000.00	COOP PAY	
10/21/09	1054	\$34,199.00	2nd 1/2 of OCT	\$39,199.00
11/11/09	1060	\$20,075.00	PART of 1/2 NOV 1st (gross)	
11/25/09	1122	\$5,710.00	BAL. of 2nd 1/2 NOV \$19700 ADVANCE	\$25,710.00
12/9/09	1323	\$20,267.00		
12/11/09	1325	\$20,000.00	PARTIAL 2nd 1/2 Dec	
12/23/09	1378	\$5,300.00	misc*	
12/29/09	1377	\$5,000.00	Dec	\$50,067.00
Total for Fourth Quarter 2009				\$113,091.00
Total for Year 2009				\$166,710.25
1/11/10	1354	\$14,268.11	1st 1/2 JAN	
1/14/10	1379	\$23,100.00	ADVANCE 2nd 1/2 JAN	
2/2/10	1381	\$6,164.00	2nd 1/2 (w/ 6d. of PARTIAL)	\$45,152.11
2/24/10	1390	\$24,529.18	2nd 1/2 Feb	\$24,529.18
3/1/10	1351	\$5,500.00	misc*	
3/16/10	1492	\$2,800.00	misc*	
3/19/10	1393	\$22,000.00	1500	
3/24/10	1395	\$25,000.00	misc*	\$55,000.00
Total for First Quarter 2010				\$121,181.29
4/19/10	1432	\$0,304.00	misc*	
4/28/10	1435	\$2,387.00	misc*	\$25,765.00
5/6/10	1447	\$6,000.00	misc*	
6/10/10	1449	\$0.00	misc*	\$1,427.00
Total for Second Quarter 2010				\$22,697.00
7/7/10	1477	\$8,261.00	1st half July '10	
7/27/10	1471	\$9,000.00	misc*	
7/28/10	1480	\$5,000.00	misc*	
7/24/10	1483	\$7,525.00	misc*	\$29,786.00
Total for Third Quarter 2010				\$29,786.00
11/1/10	1455	\$12,000.00	ADVANCE 1st 1/2 NOV	
11/10/10	1455	\$5,510.00	1st 1/2 NOV	
11/17/10	1457	\$1,500.00	misc*	
11/24/10	1462	\$21,463.00	2nd half Nov '10	\$38,463.00
12/21/10	1456	\$16,829.00	2nd 1/2 of Dec ADVANCE	
12/23/10	1467	\$8,807.50	Dec. 2nd 1/2	\$25,710.50
Total for Fourth Quarter 2010				\$64,168.50
Total for Year 2010				\$237,742.79
1/3/2011	1471	\$14,462.00	1st 1/2 Jan	\$14,462.00
Total for First Quarter 2011				\$14,462.00
5/11/11	1574	\$557.56	misc*	\$557.56
Total for Second Quarter 2011				\$557.56
Total for Year 2011				\$15,019.56
Total for 2008-2011				\$1,068,084.13

Exhibit 201.

DISPUTED Malouf has worked in the securities industry for 31 years. During that time he has a clean record. The conduct at issue is confined to a three year period involving unique circumstances surrounding the sale of Branch 4GE to LaMonde, a one-time event. It was suggested to him that he sell the branch by RJFS, who also provided him with a template agreement to complete the sale. Malouf believed that the sale of Branch 4GE was completed appropriately and he did not withhold information from anyone regarding the sale. The sale involved one transaction (sale of the branch, one payment amount (40% of branch commissions), paid in installments over a four-year period.

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In summary, from January 2008 until at least June 2010, Malouf failed to disclose to UASNM clients, UASNM employees, and UASNM's outside compliance consultant the details of his arrangement with Lamonde to be paid for trades executed

	though Lamonde's Raymond James branch.
	See Proposed Findings of Fact ##79-84, 87, 88; FOF ##34, 35, 136, 151, 153, 154.
	DISPUTED Opposed as repetitive and argumentative. See opposition to PFOF ## 79-84, 87, 88, and 105.
115	Bell testified that the account transfer could have occurred without Lamonde or Malouf providing a list of accounts.
	<p>Q Now, in order to accomplish a transfer of accounts, would it have been necessary for either Mr. Malouf or Mr. Lamonde to have provided a list of the accounts to transfer?</p> <p>A Not with this type of transition, no.</p> <p>Q Why not?</p> <p>A Because we would be able to pull the accounts under those particular rep numbers and systematically make that change.</p> <p>Malouf Trial Tr. 11/19/2014 at 635:9-17.</p>
	UNDISPUTED that Bell said this, although Bell did not testify that the transfer in fact occurred without LaMonde or Malouf providing a list of accounts. In fact, the evidence showed that a list was provided. See Hg. Exhibits 514 and 515 (indicating Malouf sent a list to RJFS).
116	As CEO and head of UASNM's marketing efforts, Malouf had responsibility for ensuring that the information on UASNM's website was accurate.
	<p>Proposed Finding of Fact #106.</p> <p>Q. [McKenna] During the period of 2008 until May 2011, what [who] at UASNM led its marketing efforts?</p> <p>A. [Hudson] Well like I said before, we were all advisors and we all had areas of different responsibility and marketing, and business development would be Mr. Malouf's expertise.</p> <p>Q. And would that fall under his ambit not because of his expertise, but also because of his role as chief executive officer and majority shareholder?</p> <p>A. Clearly uninvolved in every RFP. In terms of producing marketing materials that would be his area of responsibility.</p>

	<p>Q. Did UASNM maintain a website during this period, 2008 to 2011?</p> <p>A. We did.</p> <p>Q. And did Mr. Malouf have any involvement in that website?</p> <p>A. He did.</p> <p>Q. What was his involvement in that?</p> <p>A. Well, he -- in different generations of it, different versions of it there was a version that he and Mr. Womack really created together. There was another version that he had hired the daughter of a client to develop. And so, for at least part of that period, the website was something that he took the lead on developing.</p> <p>Malouf Trial Tr. 11/17/2014 at 156:16-157:16.</p>
	<p>DISPUTED</p> <p>Hudson's self-serving assertion is contradicted both by UASNM's compliance manual and the testimony of the CCO, Kocpczynski, who admitted his that the responsibility for the website was his and that he actually reviewed it for accuracy. See opposition to PFOF #105.</p>

VI. Proposed Conclusions of Law

1	<p>Broker activity can be evidenced by such things as regular participation in securities transactions, receiving transaction-based compensation or commissions (as opposed to salary), a history of selling the securities of other issuers, involvement in advice to investors and active recruitment of investors.</p>
	<p><i>See, e.g., SEC v. George</i>, 426 F.3d 786, 797 (6th Cir. 2005); <i>SEC v. Kenton Capital, Ltd.</i>, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998).</p>
	<p>UNDISPUTED, though receipt of commissions is the "hallmark" of a broker. <u><i>S.E.C. v. Kramer</i></u>, 778 F. Supp. 2d 1320, 1334-35 (M.D. Fla. 2011), and the evidence showed no commissions were received. The payments were based on the purchase price agreed by Malouf and LaMonde.</p>
2	<p>Transaction based compensation is not a prerequisite to finding liability for acting as an unregistered broker-dealer.</p>

	<p><i>Bandimere</i>, ID Release No. 507, 2013 WL 5553898, at *52, 82 (October 8, 2013) (finding that “[e]ven assuming [Respondent] did not receive transaction based compensation, the evidence that he acted as an unregistered broker is overwhelming”).</p>
	<p>UNDISPUTED, though receipt of commissions is the “hallmark” of a broker. <u>S.E.C. v. Kramer</u>, 778 F. Supp. 2d 1320, 1334-35 (M.D. Fla. 2011), and the evidence showed no commissions were received. The payments were based on the purchase price agreed by Malouf and LaMonde. Further, <i>Bandimere</i> is distinguishable. Although Bandimere offered and sold securities, which were later determined to be a Ponzi scheme, Bandimere had never been registered with the Commission as a broker, dealer or investment adviser. Conversely, Malouf was a registered investor adviser. Thus, his conduct of meeting with and soliciting clients and providing advice to investors as to the merits of securities is consistent and typical of an investment adviser – not a broker. Further, the court in <i>Bandimere</i> determined that he “received compensation of 10% of investors’ monthly returns from IV Capital and 2% each month of investors’ capital in UCR” and therefore received transaction-based compensation. Malouf did not receive commissions. Payments Malouf received from LaMonde were a portion of revenues earned by Branch 4GE paid as consideration for the purchase of the branch pursuant to the PPA.</p>
3	<p>IM-2420-2 provides that “payment of compensation to registered representatives after they cease to be employed by a member of the Association – or payment to their widows or other beneficiaries – will not be deemed in violation of Association Rules provided bona fide contracts call for such payment,” provided also that the unregistered representative does not solicit new business or open new accounts.</p>
	<p>IM-2420-2. Continuing Commissions Policy</p> <p>The Board of Governors has held that the payment of continuing commissions in connection with the sale of securities is not improper so long as the person receiving the commissions remains a registered representative of a member of the Association.</p> <p>However, payment of compensation to registered representatives after they cease to be employed by a member of the Association — or payment to their widows or other beneficiaries — will not be deemed in violation of Association Rules, provided bona fide contracts call for such payment.</p> <p>Also, a dealer-member may enter into a bona fide contract with another dealer-member to take over and service his accounts and, after he ceases to be a member, to pay to him or to his widow or other beneficiary continuing commissions generated on such accounts.</p> <p>An arrangement for the payment of continuing commissions shall not under any circumstances be deemed to permit the solicitation of new business or the opening of new accounts by persons who are not registered. Any arrangement for payment of continuing commissions must, of course, conform with any applicable laws or regulations.</p> <p>This policy recognizes the validity of contracts entered into in good faith between employers and employees at the time the employees are registered representatives of the employing members. Such a contract may vest in an employee the right to receive continuing compensation on business done in the event the employee retires and the right to designate such payments to his widow or other beneficiary.</p>

	Exhibit 234 at 4.
	UNDISPUTED
4	<p>The 2008 SIFMA no-action letter explicitly references three prior no-action letters issued in 1993, 1994 and 1998 respectively, prior to Malouf's sale of the RJFS branch, that contain requirements similar to those in the SIFMA letter, most notably the requirement that the retiring representative sever association with any broker, dealer, or investment adviser, and not engage in the securities business.</p>
	<p>or her former clients, the retiring financial consultant will terminate his or her association with the company, and will not be associated with any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, nor hold himself or herself out as being so associated, and the retiring financial consultant will not engage in the securities business in any fashion. If a retiring financial</p> <p>transactions with them. Upon retirement, the former Financial Consultant must sever his association with Shearson, and he may not be associated with any other broker, dealer, or investment adviser (nor hold himself out as being so associated) during the term of the agreement. In short, the Financial Consultant may not engage in the securities business in any fashion.</p> <p>The Participant will receive no compensation for new account referrals after retirement, and the Participant will agree that, during the three-year period, he or she will not (a) contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, (b) discuss securities accounts or securities transactions with former clients, (c) maintain any license as a registered or associated person of, or otherwise be associated with, PSI or any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, or hold himself or herself out as being so associated, or (d) engage in the securities business in any other manner. The</p> <p>Inc., and all prevailing policies, procedures and rules of Gruntal. The Participant further agrees that, after the retirement date, he/she will not contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, will not discuss securities accounts or securities transactions with former clients, will not maintain any license as a registered person or otherwise be associated with Gruntal or any other broker, dealer, municipal securities dealer, government securities dealer, investment company or investment adviser or hold himself/herself out as being so associated and will not engage in the securities industry to any other extent or manner which would require the Participant to register with any regulatory or self-regulatory organizations, agencies, commissions or exchanges.</p> <p>the agreement. Upon retirement of the retiring financial consultant and during the term of the agreement, the retiring financial consultant will not contact, either directly or indirectly, his or her former clients for the purpose of soliciting them to engage in securities transactions, and will not discuss securities transactions with his or her former clients, the retiring financial consultant will terminate his or her association with the company, and will not be associated with any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, nor hold himself or herself out as being so associated, and the retiring financial consultant will not engage in the securities business in any fashion. If a retiring financial</p>

	<p>The Participant will receive no compensation for new account referrals after retirement, and the Participant will agree that, during the three-year period, he or she will not (a) contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, (b) discuss securities accounts or securities transactions with former clients, (c) maintain any license as a registered or associated person of, or otherwise be associated with, PSI or any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, or hold himself or herself out as being so associated, or (d) engage in the securities business in any other manner. The Inc., and all prevailing policies, procedures and rules of Gruntal. The Participant further agrees that, after the retirement date, he/she will not contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, will not discuss securities accounts or securities transactions with former clients, will not maintain any license as a registered person or otherwise be associated with Gruntal or any other broker, dealer, municipal securities dealer, government securities dealer, investment company or investment adviser or hold himself/herself out as being so associated and will not engage in the securities industry to any other extent or manner which would require the Participant to register with any regulatory or self-regulatory organizations, agencies, commissions or exchanges.</p> <p>Ex 4 to Division's Pre-Hearing Brief at 2, 3, 9, and 13.</p>
	<p>UNDISPUTED, however IM 2420-2 does not set forth any requirement that a broker retire from the securities industry, nor did the template PPA provided by RFJS, both of which Malouf relied on in guiding his sale of Branch 4GE. See PCOL # 3.</p> <p>Q All right. So, you're reading that paragraph. Is there anything in there that references retirement as a requirement? A The information about how he can pay his widow or beneficiary? Q Well, it says, "to pay him or to his widow or other beneficiary." A Right. Right. Q So nothing in there about retirement? A Not to my knowledge.</p> <p>Malouf Trial Transcript 11/20/14 at 1044:12-21</p> <p>"SEC no-action letters constitute neither agency rule-making nor adjudication and thus are entitled to no deference beyond whatever persuasive value they might have, see <i>Morales v. Quintel Entm't, Inc.</i>, 249 F.3d 115, 129 (2d Cir.2001); <i>N.Y. City Employees' Ret. Sys. v. SEC.</i>, 45 F.3d 7, 13 (2d Cir.1995); <i>Amalgamated Clothing & Textile Workers Union v. SEC.</i>, 15 F.3d 254, 257 (2d Cir.1994). Indeed, "[e]ven when district courts have ruled in accord with no-action letters, they almost always have analyzed the issues independently of the letters." <i>N.Y. City Employees' Ret. Sys.</i>, 45 F.3d at 13."</p>
5	<p>FINRA Interpretive Letters prior to Malouf's sale of the RJFS branch to Malouf also instructed selling brokers that they could not "solicit new business, open new accounts, or service the accounts generating the continuing commission payments."</p>

	<p>NASD IM-2420-2 ("Continuing Commissions Policy") provides that member firms are permitted to pay continuing commissions to registered representatives after they cease to be employed by a member, if, among other things, a bona fide contract between the member and the registered representative calling for the payments was entered into in good faith while the person was a registered representative of the employing member. The arrangement may not permit RR to solicit new business, open new accounts, or service the accounts generating the continuing commission payments. Based on the facts you have provided, and assuming a bona fide contract covering the arrangement is duly executed, RR would be eligible to receive continuing commissions from Commonwealth under NASD IM-2420-2.</p> <p>Exhibit 166 at 1.</p>
	<p>UNDISPUTED, but see opposition to PCOL #4 regarding the fact that no-action letters are not agency rules or adjudication, and are entitled to no deference. Further, there is no evidence Malouf solicited new business for Branch 4GE, opened any new accounts, or serviced the accounts at Branch 4GE.</p>
6	<p>Scienter may be established by showing extreme recklessness.</p>
	<p><i>SEC v. Steadman</i>, 967 F.2d 636, 641-42 (D.C. Cir. 1992).</p>
	<p>UNDISPUTED</p>
7	<p>One of an investment adviser's "basic duties" under Section 206 is to ensure that its clients' transactions are executed "in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances."</p>
	<p><i>In re Kidder, Peabody & Co., Inc.</i>, Rel. No. 34-8426, 43 SEC 911, 915 (Oct. 16, 1968) (settled).</p>
	<p>UNDISPUTED</p>
8	<p>Failure to seek best execution or to conduct best execution review constitutes a violation of Section 206(2) and 207 of the Advisers Act.</p>
	<p><i>Jamison, Eaton & Wood, Inc.</i>, Rel. No. IA-2129, 2003 WL 21099127, at *1 (May 15, 2003) (settled). ("By failing to disclose its potential conflict of interest and other brokerage options, and by failing to seek to obtain best execution, Jamison violated Sections 206(2) and 207 of the Advisers Act.")</p>
	<p>UNDISPUTED</p>

9	<p>An adviser's failure to seek best execution for clients can be established by showing that clients paid higher commissions with no apparent corresponding benefit.</p>
	<p><i>Jamison, Eaton & Wood, Inc.</i>, Rel. No. IA-2129, 2003 WL 21099127, at *6 (May 15, 2003) (settled).</p> <p>"Taking into consideration the higher commissions paid by some of Jamison's clients, and the lack of any apparent corresponding benefit such as better trading prices, Jamison failed to seek to obtain best execution for these clients."</p>
	<p>DISPUTED The language from <i>Jamison</i> is accurately quoted, but does not support the proposed conclusion of law. According to the SEC's guidance, which is the only regulatory guidance cited by either party, best execution "is <i>not</i> [determined by] the lowest possible commission cost but whether the transaction represents the best qualitative execution for the managed account." <u>Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934</u>, Exchange Act Release No. 23,170 (Apr. 23, 1986) (emphasis added). An investment adviser must consider a number of qualitative and quantitative factors when trying to achieve best execution, not just the amount of commission. <u>See</u> COL 23.</p> <p>The only specific SEC requirement for ensuring compliance with best execution is "periodic and systematic review" of the procedures employed for best execution. <u>See</u> Exchange Act Release No. 23,170 (Apr. 23, 1986). Indeed, in <i>Jamieson</i>, it was determined that the firm "did not periodically and systematically review its brokerage arrangements" and "thereby failed to seek to obtain best execution for these clients." 2003 WL 21099127, at *6 ("[f]or long-standing clients who selected their own RRs and broker-dealers prior to the time that Jamison entered into a bank clearing arrangement, Jamison did not periodically and systematically review its brokerage arrangements. Eventually, as new business practices evolved, Jamison failed to disclose that other brokerage arrangements (which may have provided better execution) were available, and Jamison thereby failed to seek to obtain best execution for these clients.")</p>
10	<p>Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit any person from employing a fraudulent scheme, making misstatements or omissions of material fact, or engaging in any practice or course of business that operates as a fraud upon any person in connection with the purchase or sale of a security.</p>
	<p>15 U.S.C. § 78j(b) and 17 CFR § 240.10b-5.</p>
	<p>UNDISPUTED</p>

11	<p>“To be liable for a scheme to defraud, a defendant must have ‘committed a manipulative or deceptive act in furtherance of the scheme.’”</p>
	<p><i>SEC v. Fraser</i>, 2010 U.S. Dist. LEXIS 7038, at *23 (D. Ariz. Jan. 28, 2010), quoting <i>Cooper v. Pickett</i>, 137 F.3d 616, 624 (9th Cir. 1997).</p>
	<p>UNDISPUTED</p>
12	<p>The defendant must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme.</p>
	<p><i>Simpson v. AOL Time Warner, Inc.</i>, 452 F.3d 1040, 1048 (9th Cir. 2006), vacated on other grounds by <i>Simpson v. Homestore.com</i>, 519 F.3d 1041, 1041-42 (9th Cir. 2008).</p> <p>“We hold that to be liable as a primary violator of § 10(b) for participation in a “scheme to defraud,” the defendant must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme.”</p>
	<p>UNDISPUTED</p>
13	<p>Section 207 of the Advisers Act makes it unlawful for any person willfully to make any untrue statement of a material fact or omit to state any material fact required to be stated in a report filed with the Commission, including Form ADV.</p>
	<p><i>Vernazza v. SEC</i>, 327 F.3d 851, 858 (9th Cir. 2003).</p> <p>“Advisers Act § 207 criminalizes willfully making false statements of material fact, or material omissions, in applications or reports to the Commission, such as a Form ADV.”</p>
	<p>UNDISPUTED</p>
14	<p>The materiality standard for Section 207 claims is essentially the same as for violations of Section 206.</p>
	<p><i>Vernazza v. SEC</i>, 327 F.3d 851, 858 (9th Cir. 2003).</p> <p>“Although scienter is required for some of these violations, the element of a materially false statement is satisfied by essentially the same conduct for all of the statutes in question.”</p>

	UNDISPUTED
15	Section 207 does not require a showing of scienter.
	<i>Jamison</i> , Release No. IA-2129, 2003 WL 21099127, at *6.
	UNDISPUTED
16	An investment adviser can violate Section 207 by failing to adequately disclose the factors considered in selecting a broker or by misstating that it would seek to obtain best execution.
	DISPUTED No authority has been cited that supports this proposition.
17	Advisers Act Section 206(4) prohibits a registered investment adviser from engaging “in any act, practice, or course of business which is fraudulent, deceptive, or manipulative[,]” including those defined by the Commission.
	15 U.S.C. § 80b-6(4).
	UNDISPUTED
18	Neither scienter nor proof of client harm is required under Adviser’s Act Section 206(4).
	<i>SEC v. C.R. Richmond & Co.</i> , 565 F.2d 1101, 1105 (9th Cir. 1977), citing <i>SEC v. Capital Gains Research Bureau, Inc.</i> , 375 U.S. 180, 84 S.Ct. 275, 11 L.Ed.2d 237 (1963). “The court there also held that the Commission does not have to show, in injunctive actions, that an investment adviser’s activities injured his clients or were intended to harm clients or prospective clients.”
	UNDISPUTED
19	Rule 206(4)-1(a)(5) prohibits a registered investment adviser from publishing, circulating, or distributing advertisements containing untrue statements of material facts, or that are otherwise false or misleading.
	17 CFR § 206(4)-1(a)(5).
	UNDISPUTED

20	A website can be considered an advertisement for purposes of violations of Rule 206 and Section 17(a).
	<p><i>Fields</i>, Release No. 474, 2012 WL 6042354, at *12 (Dec. 5, 2012).</p> <p>“Fields's misrepresentations on Platinum's website violated Securities Act Section 17(a), and his misrepresentations on the AFA website and in AFA's Form ADV and brochure violated Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-1(a)(5).”</p>
	UNDISPUTED
21	To establish aiding and abetting liability, the Commission must show: “that a principal committed a primary violation; (2) that the aider and abettor provided substantial assistance to the primary violator, and (3) that the aider and abettor had the necessary ‘scienter’- i.e. that she rendered such assistance knowingly or recklessly.”
	<i>Graham v. S.E.C.</i> , 222 F.3d 994, 1000 (D.C. Cir. 2000); <i>see also First Interstate Bank of Denver v. Pring</i> , 969 F.2d 891, 898 (10th Cir. 1992).
	DISPUTED as incomplete <i>S.E.C. v. Slocum, Gordon & Co.</i> , 334 F. Supp. 2d 144, 184 (D.R.I. 2004) (“To establish its claim for aiding and abetting, the Division must show: (1) a primary or independent securities law violation by an independent violator; (2) the aider and abettor's knowing and substantial assistance to the primary securities law violator; and (3) awareness or knowledge by the aider and abettor that his role was part of an activity that was improper.”).
22	The Tenth Circuit applies a “recklessness” standard for aiding and abetting liability and the D.C. Circuit requires a showing that the aider and abettor acted with “extreme recklessness.”
	<p>“We hold that in an aiding-and-abetting case based on assistance by action, the scienter element is satisfied by recklessness.”</p> <p><i>First Interstate Bank</i>, 969 F.2d at 903.</p> <p>“Two of our decisions, rendered after <i>Investors Research</i>, make this point. <i>Graham v. SEC</i>, 222 F.3d 994 (D.C.Cir.2000); <i>SEC v. Steadman</i>, 967 F.2d 636 (D.C.Cir.1992). Both hold that “extreme recklessness” may support aiding and abetting liability.”</p> <p><i>Howard v. SEC</i>, 376 F.3d 1136, 1143 (D.C. Cir. 2004).</p>
	UNDISPUTED

23	Negligence is sufficient to establish liability for causing a violation when a person is alleged to have caused a primary violation that does not require scienter.
	<p><i>KPMG Peat Marwick</i>, Release No. 34-43862, 2001 WL 34138819 (Jan. 19, 2001), <i>aff'd</i>, <i>KPMG v. SEC</i>, 289 F.3d 109 (D.C. Cir. 2002).</p> <p>“ORDERED that KPMG LLP (formerly known as KPMG Peat Marwick LLP) cease and desist from committing any violation or future violation of Rule 2-02(b) of Regulation S-X, or from being a cause of any violation or future violation of Section 13(a) of the Securities Exchange Act of 1934 or Rule 13a-1 thereunder due to an act or omission KPMG LLP knows or should know will contribute to such violation, by having any transactions, interests, or relationships that would impair its independence under Rule 2-01 of Regulation (sic) S-X or under Generally Accepted Auditing Standards (GAAS).”</p>
	DISPUTED as incomplete. According to the case law relied on by the Commission, <i>KPMG v. KPMG Peat Marwick</i> , SEC Release 34-43862; <i>KPMG v. SEC</i> , 289 F.3d 109 (D.C. Cir. 2002), this standard is limited only to cease-and-desist proceedings under Section 21C of the Exchange Act. <i>See</i> 15 U.S.C. § 78u-2(c).
24	“While it is unnecessary to show that an aider and abettor knew he was participating in or contributing to a securities law violation, there must be sufficient evidence to establish ‘conscious involvement in impropriety.’”
	<i>SEC v. Slocum, Gordon & Co.</i> , 334 F. Supp. 2d at 184. Respondent’s Pre-Hearing Brief at 16.
	UNDISPUTED
25	“This involvement may be demonstrated by proof that the aider or abettor ‘had general awareness that his role was part of an overall activity that [was] improper.’”
	<i>SEC v. Coffey</i> , 493 F.2d 1304, 1316 (6 th Cir. 1974); Respondent’s Pre-Hearing Brief at 16.
	UNDISPUTED
26	In order to establish the element of willfulness, the Division must show that Malouf merely intended to engage in the action alleged regardless of his knowledge that the act constituted a violation of the securities law.
	<i>SEC v. Moran</i> , 922 F. Supp. 867, 900 (S.D.N.Y. 1996); Respondent’s Pre-Hearing

	Brief at 15.
	UNDISPUTED
27	The element of substantial assistance is met when, based upon all the circumstances surrounding the conduct in question, a defendant's actions are a 'substantial causal factor' in bringing about the primary violation.
	<i>SEC v. K.W. Brown & Co.</i> , 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2007); Respondent's Pre-Hearing Brief at 18.
	UNDISPUTED
28	"Reckless conduct is, at the least, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care ... to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it."
	<i>Rolf v. Blyth, Eastman Dillon & Co.</i> , 570 F.2d 38, 47 (2d Cir. 1978); Respondent's Pre-Hearing Brief at 19.
	UNDISPUTED
29	To establish a defense of reliance on others Malouf must show that he did not withhold any material information from the professional on whom he purports to rely.
	<i>Provenz v. Miller</i> , 102 F.3d 1478, 1491 (9 th Cir. 1996), <i>citing C.E. Carlson, Inc. v. SEC</i> , 859 F.2d 1429, 1436 (10 th Cir. 1988). "If it is true that defendants withheld material information from their accountants, defendants will not be able to rely on their accountant's advice as proof of good faith. <i>See C.E. Carlson, Inc. v. SEC</i> , 859 F.2d 1429, 1436 (10th Cir.1988) (stating that full disclosure to professional must be established to support the defense of reliance on expert opinion)."
	UNDISPUTED ; however the evidence shows that all material witnesses were aware of the essential facts regarding the sale of the branch, and that Malouf did not withhold any material information. As such, reliance on professional advice negates a finding of willfulness. <i>S.E.C. v. Slocum, Gordon & Co.</i> , 334 F. Supp. 2d 144, 181-82 (D.R.I. 2004).
30	By its express wording, Section 2462 applies only where the SEC seeks relief that a court deems punitive – "any civil fine, penalty, or forfeiture, pecuniary or

	otherwise.”
	<p>§ 2462. Time for commencing proceedings</p> <p>Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.</p> <p>28 U.S.C. § 2462.</p>
	<p>DISPUTED. The five-year statute of limitations contained in 28 U.S.C. § 2462 applies to all forms of relief sought by the Division. <u>SEC v. Graham</u>, 21 F. Supp.3d 1300, 1308-10 (S.D. Fla. 2014). <u>See</u> Malouf PCOL 55, 56.</p>
31	<p>Section 2462 does not limit the time for the SEC to file claims seeking equitable or remedial relief such as disgorgement, permanent injunctions, or officer and director bars.</p>
	<p>Equitable relief in SEC enforcement actions may include orders of disgorgement, injunctions against future violations, or imposition of an officer and director bar. Some courts have held that some or all of these equitable remedies are exempt from § 2462's limitations period as a matter of law. <i>See Kelly</i>, 663 F.Supp.2d at 286 (citing cases); <i>Zacharias v. SEC</i>, 569 F.3d 458, 473 (D.C.Cir.2009) (holding disgorgement not punitive). Other courts have engaged in a fact-intensive inquiry to determine whether the equitable remedies sought in a particular case are remedial or punitive. <i>See SEC v. Alexander</i>, 248 F.R.D. 108, 115–16 (E.D.N.Y. 2007) (discussing alternative approaches); <i>Johnson v. SEC</i>, 87 F.3d 484, 488 (D.C.Cir.1996). This unsettled question is immaterial to this case, as the district court undertook the fact-intensive inquiry articulated in <i>Johnson</i> and applied in <i>Jones</i>.</p>

	<p><i>SEC v. Quinlan</i>, 373 Fed. Appx. 581, 588 (6th Cir. 2010) (affirming district court's conclusion that "the risk to the investing public outweighed the severe collateral consequences of the equitable relief, and, therefore, that the permanent injunction and officer and director bar were remedial rather than punitive."); <i>see also Zacharias v. SEC</i>, 569 F.3d 458, 471-72 (D.C. Cir. 2009) ("[A]n 'order to disgorge is not a punitive measure; it is intended primarily to prevent unjust enrichment.'") (citations omitted); <i>SEC v. Packetport.com, Inc.</i>, 2006 WL 2798804, *3 (D. Conn. Sept. 27, 2006) (granting motion to strike statute of limitations affirmative defense because SEC sought only "equitable relief in the form of, inter alia, disgorgement, officer and director bars, and injunctions").</p>
	<p>DISPUTED. The five-year statute of limitations contained in 28 U.S.C. § 2462 applies to all forms of relief sought by the Division. <i>SEC v. Graham</i>, 21 F. Supp.3d 1300, 1308-10 (S.D. Fla. 2014) ("In essence, the SEC's argument in this case is that because the words "declaratory relief," "injunction," and "disgorgement" do not appear in § 2462, no statute of limitations applies. The principles underlying the Supreme Court's decision in <i>Gabelli</i>, however, counsel against accepting the SEC's argument.) <i>See also</i> Malouf PCOL 55, 56. Moreover, the express language of § 2462 includes the forms of relief sought here by the Division: "disgorgement, permanent injunctions, or officer and director bars" are all "penalt[ies], or forfeiture[s], pecuniary or otherwise . . ." There is no legitimate dispute that the relief sought is penal in nature, and is both "pecuniary" and "otherwise." <i>See</i> Division's PCOL #44, in which it cites case law describing a bar as a "sanction." "Sanction: <u>Penalty</u> or other mechanism of enforcement used to provide incentives for obedience with the law or with rules and regulations." <i>Black's Law Dictionary, Sixth Ed. 1990.</i></p>
32	<p>The continuing violation doctrine provides that an action is timely filed if it is filed within the required limitations period measured from the date the unlawful conduct stopped.</p>
	<p>Denial of defendant's limitations argument is also appropriate in light of the SEC's reliance on the continuing violation doctrine. Under that doctrine, if the alleged unlawful practice continues into the limitations period, the complaint is timely if filed within the required limitations period (in this case, five years) measured from the end of that practice. <i>See Havens Realty Corp. v. Coleman</i>, 455 U.S. 363, 380-81, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982).</p> <p><i>SEC v. Kovzan</i>, 807 F. Supp. 2d 1024, 1035-36 (D. Kan. 2011); <i>see also SEC v. Geswein</i>, 2011 WL 4541303, *2 (N.D. Ohio Sept. 29, 2011) (equitable tolling includes the continuing violations doctrine); <i>SEC v. Huff</i>, 758 F. Supp. 2d 1288, 1340 (S.D. Fla. 2010) ("[W]here the appropriate facts exist, the 'continuing violations' doctrine may apply to the statute of limitations in SEC enforcement actions."); <i>SEC</i></p>

	<p><i>v. Kelly</i>, 663 F. Supp. 2d 276, 288 (S.D.N.Y. 2009) (rejecting motion to dismiss SEC’s claim for penalties on statute of limitations grounds because continuing violation doctrine in combination with a tolling agreement made the claims timely filed); <i>but cf.</i>, <i>SEC v. Caserta</i>, 75 F. Supp. 2d 79, 89 (S.D.N.Y. 1999) (“[I]t is not at all certain that the continuing violation doctrine applies in securities fraud actions.”); <i>SEC v. Jones</i>, 2006 WL 1084276, *4-5 (S.D.N.Y. Apr. 25, 2006).</p>
	<p>UNDISPUTED regarding what the doctrine provides, but DISPUTED that the doctrine applies in this case. See Respondent’s Response to Division’s Post-Trial Brief at pp. 17-18. Further, the statute runs from the date of the conduct, and there is no applicable “fraud discovery rule.” <i>Gabelli v. S.E.C.</i>, 133 Ct. 1216, 1222-24 (2013).</p>
33	<p>Section 21C of the Exchange Act provides that, if the Commission finds that any person has violated any rule or regulation under the Exchange Act, the Commission may publish its findings and enter an order requiring any person that was a cause of the violation to cease and desist from causing any future violation of the same provision, rule, or regulation.</p>
	<p>15 U.S.C. §78u-3(a).</p>
	<p>UNDISPUTED</p>
34	<p>In deciding whether to issue a cease-and-desist order, the court must consider whether there is a reasonable likelihood of future securities violations.</p>
	<p><i>KPMG Peat Marwick LLP</i>, Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).</p>
	<p>UNDISPUTED</p>
35	<p>In the ordinary course, a past violation suffices to establish a risk of future violations.</p>
	<p><i>Id.</i></p>
	<p>DISPUTED as incomplete; <i>see WHX Corp. v. SEC</i>, 362 F.3d 854, 859 (D.C. Cir. 2004) (“Under this view, apparently, the ‘risk of future violation’ element is satisfied if (1) a party has committed a violation of a rule, and (2) that party has not exited the market or in some other way disabled itself from recommission of the offense. Given that the first condition is satisfied in every case where the Commission seeks a cease-and-desist order on the basis of past conduct, and the second condition is satisfied in almost every such case, this can hardly be a significant factor in determining when a cease-and-desist order is warranted. The Commission itself has disclaimed any notion</p>

	<p>that a cease-and-desist order is ‘automatic’ on the basis of such an almost inevitably inferred risk of future violation. See <i>KPMG</i>, 289 F.3d at 124-25.”)</p> <p>“The ‘risk of future violation’ cannot be the sole basis for its imposition of the [cease and desist] order, as the SEC’s standard for finding such a risk is so weak that it would be met in (almost) every case.” <i>Id</i> at 860.</p>
36	<p>The showing necessary to demonstrate the likelihood of future violations is “significantly less than that required for an injunction.”</p>
	<p><i>KPMG Peat Marwick LLP</i>, Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).</p>
	<p>DISPUTED as incomplete; See opposition to PCOL #35.</p>
37	<p>In deciding whether to issue a cease-and-desist order, the court may consider several factors including the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent’s state of mind, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his or her conduct, the respondent’s opportunity to commit future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.</p>
	<p><i>KPMG Peat Marwick LLP</i>, Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).</p>
	<p>UNDISPUTED</p>
38	<p>This inquiry is a flexible one and no one factor is dispositive.</p>
	<p><i>KPMG Peat Marwick LLP</i>, Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).</p>
	<p>UNDISPUTED</p>
39	<p>It is undertaken not to determine whether there is a “reasonable likelihood” of future violations but to guide the court’s discretion.</p>
	<p><i>KPMG Peat Marwick LLP</i>, Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).</p>

	UNDISPUTED
40	While the Hearing Officer must limit disgorgement to “ill-gotten gains,” he has broad discretion and may consider all of a defendant’s wrongful conduct in violation of the securities laws in ordering disgorgement and calculating the amount to be disgorged.
	<p>“While the Court must limit any disgorgement remedy to “ill-gotten gain,” the rationale behind the equitable remedy of disgorgement allows for broad consideration of all of a defendant’s wrongful conduct in connection with the violation of the securities laws. In this regard, district courts enjoy discretion extending not only to determining whether to order disgorgement but also to calculating any amount to be ordered disgorged.”</p> <p><i>SEC v. Huff</i>, 758 F. Supp. 2d 1288, 1358 (S.D. Fla. 2010).</p>
	UNDISPUTED ; however Disgorgement is improper because (1) Malouf did not receive any ill-gotten gains; (2) disgorgement above and beyond those monies Malouf already paid to compensate investors would be punitive; and (3) Malouf would not be unjustly enriched if he is allowed to retain the reasonable value of branch 4GE as calculated by the Division.
41	The measure of disgorgement need not be tied to losses suffered by defrauded investors.
	<p>“The measure of disgorgement need not be tied, for example, to losses suffered by defrauded investors.”</p> <p><i>SEC v. Huff</i>, 758 F. Supp. 2d 1288, 1358 (S.D. Fla. 2010)</p>
	UNDISPUTED ; however, the primary purpose of disgorgement is not to punish but to prevent unjust enrichment by depriving a wrongdoer of ill-gotten gains. <i>S.E.C. v. Bilzerian</i> , 814 F. Supp. 116, 120 (D.D.C. 1993), <i>aff’d</i> , 29 F.3d 689 (D.C. Cir. 1994); <i>Huff</i> , 758 F. Supp. 2d at 1358, <i>aff’d</i> , 455 Fed. Appx. 882 (11th Cir. 2012) (“Because disgorgement is remedial and not punitive, a court’s power to order disgorgement extends <u>only</u> to the amount with interest by which the defendant profited from his wrongdoing.”). Any disgorgement order would not be designed “to prevent unjust enrichment by depriving a wrongdoer of ill-gotten gains” but rather to punish Malouf for selling his branch.
42	Section 15(b)(6) of the Exchange Act provides that the Commission shall censure, limit, suspend, or bar any associated person from being associated with a

	<p>broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds that such censure, limitation, suspension, or bar is in the public interest.</p>
	<p>(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person--</p> <p>(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;</p> <p>15 U.S.C. §78u (b)(6)(A)(i).</p>
	<p>UNDISPUTED</p>
<p>43</p>	<p>In determining the public interest the Commission has considered the following factors: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, the likelihood that the respondent's occupation will present opportunities for future violations, the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and, in conjunction with other factors, the extent to which the sanction will have a deterrent effect.</p>
	<p>When considering whether an administrative sanction serves the public interest, we consider the factors identified in <i>Steadman v. SEC</i>: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.</p>

	<p><i>Matter of Gary M. Kornman</i>, Rel. No. 34-59403, 2009 WL 367635 at * 6 (Feb. 13, 2009) (citing <i>Steadman v. SEC</i>, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)); see also <i>Matter of Ralph W. LeBlanc</i>, Rel. No. 34-48254, 2003 WL 21755845 at * 6 (July 30, 2003); <i>Matter of Peter Siris</i>, Rel. No. 34-71068, 2013 WL 6528874 at n.72 (Dec. 12, 2013).</p>
	UNDISPUTED
44	The “inquiry into the appropriate sanction to protect the public interest is a flexible one and no one factor is dispositive.”
	<p>“[T]he Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive.”</p> <p><i>Kornman</i>, 2009 WL 367635 at * 6 (quoting <i>Matter of David Henry Disraeli</i>, Rel. No. 34-57027, 2007 WL 4481515 at * 15 (Dec. 21, 2007)).</p>
	UNDISPUTED
45	Section 21B(e) of the Exchange Act provides that, in any proceeding in which the a penalty may be imposed, disgorgement may also be ordered.
	<p>(e) Authority to enter order requiring accounting and disgorgement</p> <p>In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, the Commission or the appropriate regulatory agency may enter an order requiring accounting and disgorgement, including reasonable interest.</p> <p>15 U.S.C. §78u-2(e).</p>
	UNDISPUTED
46	Disgorgement is an equitable remedy that requires a violator to give up wrongfully obtained profits causally related to the proven wrongdoing.
	Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws. For conduct occurring on or before March 3, 2009 the maximum penalty is \$130,000 per violation.

	<i>SEC v. First City Fin. Corp.</i> , 890 F.2d 1215, 1230-32 (D.C. Cir. 1989).
	DISPUTED as to the Division's interpretation of the cited case. Undisputed that the court stated that "[d]isgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws."
47	Because of the difficulty in many cases to separate "legal from illegal profit ... it is proper to assume that all profits gained while defendants were in violation of the law constituted ill-gotten gains."
	In many cases, separating legal from illegal profit is difficult. This is due to the inherent difficulty in predicting stock price responses to alternative variables. That is, separating price appreciation due to illicit activities from price appreciation which would have otherwise occurred is nearly impossible. "Accordingly, disgorgement need only be a reasonable approximation of profits causally connected to the violation." As such, it is proper to assume that all profits gained while defendants were in violation of the law constituted ill-gotten gains. <i>SEC v Bilzerian</i> , 814 F. Supp. 116, 121 (D.D.C. 1993) (internal citations omitted); <i>see also SEC v. Drexel Burnham Lambert, Inc.</i> , 837 F. Supp. 587, 611-12 (S.D.N.Y. 1993), <i>aff'd</i> , 16 F.3d 520 (2d Cir. 1994). "[T]he well-established principle is that the burden of uncertainty in calculating ill-gotten gains falls on the wrongdoers who create that uncertainty."
	UNDISPUTED as to the language cited from the cases, but DISPUTED that allegedly illegal profits are indistinguishable from legal profit. The monies constituting fair value for the sale of Branch 4GE are clearly identifiable, and have been identified by the Division. See Hg. Exh. 208, showing "Amount due Malouf from LaMonde per PPA terms" in the amount of \$644, 290.
48	Prejudgment interest represents the amount of money the wrongdoer made or could have made by investing monies wrongfully obtained.
	Koenig's "pecuniary gain" is the amount he obtained by his fraudulent accounting, plus the economic return he made (or could have made) by investing that sum between 1992 and the date of disgorgement. And prejudgment interest is the right way to estimate the second component. <i>S.E.C. v. Koenig</i> , 557 F.3d 736, 745 (7th Cir. 2009).

	UNDISPUTED
49	An award of prejudgment interest is not a punitive award but rather is compensatory in nature.
	We have noted that awards of prejudgment interest are compensatory, not punitive, and that the district court should make its interest decision through “an assessment of the equities.” <i>S.E.C. v. Lauer</i> , 478 F. Appx 550, 557 (11th Cir. 2012).
	DISPUTED Disgorgement is a penalty and therefore prejudgment interest on disgorgement is a penalty. See opposition to PCOL #31.
50	While an award of prejudgment interest is within the Court’s discretion, courts have routinely ordered the payment of prejudgment interest where disgorgement is also awarded.
	The Court finds that prejudgment interest should be awarded to prevent Gordon from profiting from his illegal scheme. The Court has reviewed plaintiff’s proposed calculation of prejudgment interest and finds that it is reasonable. <i>See</i> Dkt. # 84–1, at 92–94. Therefore, the SEC will be awarded prejudgment interest in the amount of \$10,307,489.92 on the award of disgorgement. <i>S.E.C. v. Gordon</i> , 822 F. Supp. 2d 1144, 1162 (N.D. Ok. 2011); <i>S.E.C. v. O’Hagan</i> , 901 F. Supp. 1461, 1473 (D. Minn. 1995); <i>SEC v. Stephenson</i> , 732 F. Supp. 438, 439 (S.D.N.Y. 1990).
	UNDISPUTED that courts have awarded prejudgment interest on disgorgement in the past. DISPUTED that prejudgment interest on disgorgement is an appropriate remedy here to the extent it is time barred.
51	The prejudgment interest rate used by the Commission is the same rate used by the Internal Revenue Service to calculate underpayment penalties.
	The SEC has adopted the tax underpayment rate for prejudgment interest in its administrative proceedings and courts routinely apply this rate when awarding prejudgment interest on an order of disgorgement. <i>S.E.C. v. Gordon</i> , 822 F. Supp. 2d 1144, 1161-62 (N.D. Ok. 2011).

	UNDISPUTED
52	That rate is defined as the Federal short term rate (also known as the period rate) plus three percentage points (also known as the annual rate).
	<p>(2) Underpayment rate.--The underpayment rate established under this section shall be the sum of--</p> <p>(A) the Federal short-term rate determined under subsection (b), plus</p> <p>(B) 3 percentage points.</p> <p>26 U.S.C. § 6621(a)(2).</p>
	UNDISPUTED
53	Courts have upheld the use of this rate in Commission enforcement actions.
	<p>The SEC requests prejudgment interest, in the amount of \$10,307,489.92, on the award of disgorgement using the rate employed the Internal Revenue Service for the underpayment of taxes.</p> <p><i>S.E.C. v. Gordon</i>, 822 F. Supp. 2d 1144, 1161-1162 (N.D. OK. 2011); <i>see also S.E.C. v. First Jersey</i>, 101 F.3d 1450, 1476 (2nd Cir. 1996); <i>S.E.C. v. Drexel Burnham Lambert, Inc.</i>, 837 F. Supp. 587, 612 n.8 (S.D.N.Y. 1993).</p>
	UNDISPUTED
54	<p>In determining whether a civil penalty should be imposed against an individual, and the amount of the penalty, if one is appropriate, courts look to a number of factors, including:</p> <ul style="list-style-type: none"> • the egregiousness of the defendant's conduct; • the degree of the defendant's scienter; • whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; • whether the defendant's conduct was isolated or recurrent; and <p>whether the penalty should be reduced due to the defendant's demonstrated</p>

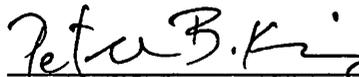
	current and future financial condition.
	<p>Though the maximum penalty is set by statute on the basis of tier, the actual amount of the penalty is left up to the discretion of the district court. In exercising this discretion, courts weigh “(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition.”</p> <p><i>SEC v. Tourre</i>, 4 F. Supp. 3d 579, 593 (S.D.N.Y. 2014) (citations omitted); <i>see also SEC v. Opulentica</i>, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007); <i>SEC v. Haligiannis</i>, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007); <i>SEC v. Lybrand</i>, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003); <i>SEC v. Coates</i>, 137 F. Supp. 2d 413, 429 (S.D.N.Y. 2001).</p>
	<p>DISPUTED as incomplete; A “defendant’s net worth and corresponding ability to pay has proven to be one of the most important factors that district courts consider when determining how much of a civil penalty to assess.” <i>S.E.C. v. Gunn</i>, 2010 WL 3359465, at *10 (N.D. Tex. 2010); <i>see also S.E.C. v. Svoboda</i>, 409 F. Supp. 2d 331, 347-49 (S.D.N.Y. 2006) (rejecting request to impose maximum penalty where defendants “perpetrated a fraud involving repeated securities law violations, considerable profits, and a high degree of scienter” because the maximum penalty “would be inappropriate given each defendant’s financial situation”); <i>S.E.C. v. Mohn</i>, 2005 WL 2179340, *9 (E.D. Mich. 2005) (waiving civil penalties against defendant where the court found it unlikely the Commission could collect any civil penalties given defendant’s net worth and his speculative and uncertain future income potential); <i>S.E.C. v. Rubin</i>, 1993 WL 405428, *7 (S.D.N.Y. 1993) (imposing \$1,000 penalty against impecunious defendant due to “the distinction between an ordinary debt that arises from a particular and definable liability, and a penalty that is designed to punish and is imposed based on an exercise of discretion”).</p>
55	<p>A three-tier penalty structure established by the Securities Act, Exchange Act, and Advisors Act provide that a third-tier penalty is appropriate where (A) the act or omission involved a deliberate or reckless disregard of a regulatory requirement; and (B) such act or omission directly or indirectly created a significant risk of substantial losses to other persons.</p>
	<p>(2) Amount of penalty</p> <p>(A) First tier</p> <p>The amount of the penalty shall be determined by the court in light of the facts and</p>

	<p>circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.</p> <p>(B) Second tier</p> <p>Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.</p> <p>(C) Third tier</p> <p>Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if--</p> <p style="padding-left: 40px;">(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.</p> <p>Section 20(d) of the Securities Act (15 USC § 77t(d)), Section 21(d)(3) of the Exchange Act (15 USC § 78u(d)(3)), and Section 209(e) of the Investment Advisors Act(15 U.S.C. § 80b-9(e)).</p>
	UNDISPUTED
56	The maximum third-tier penalty for conduct occurring after March 3, 2009 and on or before March 5, 2013 is \$150,000 per violation.
	<p>The adjustments set forth in Table III apply to violations occurring after February 14, 2005.</p> <p>U.S. Code citation 15 U.S.C. 77t(d) For natural person/substantial losses or risk of losses to others Adjusted maximum penalty amount 130,000</p> <p>17 C.F.R. § 201.1003.</p> <p>The adjustments set forth in Table IV apply to violations occurring after March 3,</p>

	2009. U.S. Code citation 15 U.S.C. 77t(d) For natural person/substantial losses or risk of losses to others Adjusted maximum penalty amount 150,000 17 C.F.R. § 201.1004.
	UNDISPUTED

Dated this 6th day of February, 2015.

Respectfully submitted,



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